

**THE MANAGEMENT OF CONTRACTUAL RISK IN
INTERNATIONAL UPSTREAM OIL AND GAS CONTRACTS:
CONTRACTUAL PROVISIONS OF LIABILITIES AND
INDEMNITIES BETWEEN THE OPERATOR AND THE
CONTRACTOR**

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Abstract

This paper evaluates the mechanisms used in the management of contractual risk, such as; risk allocation amongst the various participants in the international upstream Oil & Gas as well as standard contract forms. The discussion also focuses on judicial interpretation of standard provisions for indemnity, exclusion and limitation of liability as well as examining landmark industry incidents (such as the Deep Water Horizon, Piper Alpha, etc.) where the contractual provisions of liabilities and indemnities between the operator and the contractor were tested.

Keywords: Oil & Gas, Upstream, Risk Allocation

Introduction

Participation in the upstream oil and gas sector, require significant capital contribution as well as brings with it a high degree of risk to property damage and loss of life.¹ Operations in the industry also involve many contractors and subcontractors. In the Piper Alpha disaster, of those on board the platform who were killed, 134 were employed by contractors and 31 by the Operator, of those who survived, 55 were employed by contractors and 6 by the operator.²

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¹ Caledonia North Sea Ltd v London Bridge Engineering Ltd [2002] UKHL 4; [2002] 1 Lloyd's Rep 553, HL

² BBC, '1988: Piper Alpha oil rig ablaze', (6 of July, 1988)

<http://news.bbc.co.uk/onthisday/hi/dates/stories/july/6/newsid_3017000/3017294.stm>
accessed 2nd April 2014

Issues of risk management were brought to the front burner following the Piper Alpha disaster in the North Sea and most recently, the Macondo disaster. Contractual risk management continues to be a challenging area for both operator and contractor companies as they continue to grapple with the consequences and implications from Macondo.³ Because of the close proximity and interdependent nature of the oil and gas industry, it is extremely difficult to determine the liability level of parties. Even if this can be determined, it may involve appeals, counterclaims and other time and cost consuming procedures.⁴ The negotiation and drafting of contracts is therefore critical to the parties in a project.

In view of the above, this paper therefore evaluates the mechanisms used in the management of contractual risk, such as; risk allocation amongst the various participants in the international upstream Oil & Gas as well as standard contract forms. The discussion also focuses on judicial interpretation of standard provisions for indemnity, exclusion and limitation of liability as well as examining landmark industry incidents (such as the Deep Water Horizon, Piper Alpha, etc.) where the contractual provisions of liabilities and indemnities between the operator and the contractor were tested.

What is Contractual Risk Management?

Contractual risk management is therefore an approach to protecting an organization from losses caused by the potential risks.⁵ This raises quite a number of problems in the O&G industry characterized by multiplicity of parties in one project.

Contractual risk management is critical to the efficient implementation of exploration, development and production activities.⁶ It involves the apportionment of risks between the parties involved in contracts. One element of risk management which this paper seeks to examine is risk allocation (especially as between the operator and the contractors).

³ BP, 'Deepwater Horizon accident and response', (2013) <<http://www.bp.com/sectiongenericarticle800.do?categoryId=9036575&contentId=7067541>> accessed 5th of April 2014.

⁴ Timur Makaro, 'Indemnity in the International Oil and Gas Contracts: Key Features, Drafting and Interpretation', CEPMLP, CAR Volume 12, article 5; <<http://www.dundee.ac.uk/cepmlp/gateway/?news=29847>> accessed 3rd March 2014.

⁵ M S Syahrir, 'Liability and Risk Control Through Effective Clauses in Oil & Gas Service Contracts', (December 2004) OGEL Vol 2, Issue 5.

⁶ Sharon Wilson, 'Contractual Allocation of Risk in Upstream Oil and Gas' (2008) 4, *Energy Source*.

Risk allocation in the industry may be achieved by setting out in the contracts clauses which party will be liable for (or exempted from) a given risk and to what extent.⁷Sophisticated liability models have been developed in the oil and gas industry as a result of the unique operating environment and the potentially serious consequences that result from comparatively minor acts or omissions; some examples are, LOGIC Standard Offshore Service Contract;⁸ and AIPN 'Model International Operating Agreement' (1995). But contractual arrangements may deviate from this approach in order to spread the risks to the ones who can handle it more effectively.⁹

Risk Allocation

Generally, the liability for risk in the upstream oil and gas contracts seek to depart quite radically from the common law's presumptions on how such risk should be allocated.¹⁰ The traditional approach is, 'the party who is in breach is liable'.¹¹ Liability under common law is 'fault based'.¹² However, this is not always the case in the oil and gas industry.¹³Risk allocation in the O&G industry is premised upon allocation of risk to a party best able to control that risk, since such a party is generally in the best placed to reduce the likelihood of the risk eventuating and/or to control the consequences of that risk.¹⁴

The oil and gas industry has over the years, developed a number of contracting practices to enable it regulate and manage its inherent risks.

⁷Adedeji Bodunde Badiru & Samuel Olusola Osisanya, 'Project Management for the Oil and Gas Industry: A World System Approach' (CRC Press, 2013) e-book.

⁸LOGIC, *Standard Contracts for the UK Offshore Oil and Gas Industry: Service Onshore & Offshore* (2nd edn: October, 2003)

<<http://www.logicoil.com/sites/default/files/documents/Services%20Onshore%20and%20Offshore%20Edition%202.pdf>> accessed 5th of April 2014.

⁹M S Syahrir, 'Liability and Risk Control Through Effective Clauses in Oil & Gas Service Contracts' (2004) 2 (5) *OGEL*.

¹⁰M S Syahrir, 'Liability and Risk Control Through Effective Clauses in Oil & Gas Service Contracts', (December 2004) *OGEL* Vol 2, Issue 5

¹¹G H Treitel, 'The law of contract', (11th edn, sweet and Maxwell 2003) 926.

¹²Donoghue v Stevenson [1932] AC 562.

¹³Article 4 (6) AIPN provides a classic example of a non-fault indemnity excluding liability for gross negligence and wilful misconduct

¹⁴Sharon Wilson, 'Contractual Allocation of Risk in Upstream Oil And Gas', *Energy Source* (Spring 2008), Issue 4 Ashurt

These include:

- Indemnity and hold harmless clauses
- Exemption/Exclusion clauses
- Limitation of Liability clauses

Indemnity

Gordon defines indemnity to mean “a contractual provision whereby the indemnifying party agrees to make a payment to the party having the benefit of the indemnity in the event that the indemnified party suffered loss as a result of the occurrence of a specified event.”¹⁵

The aim of the indemnity agreement is to allocate risk and quantify liability in a meaningful way.¹⁶ Indemnity is a diversified concept. It can be simple or mutual; examined separately or in combination with insurance as a tool for risk management between two or more parties. The simple indemnity is a “one way traffic” where one party has the burden of indemnifying the other party, whereas the Mutual indemnity, commonly referred to as the “knock for knock” indemnity, is circular in nature. Here both parties indemnify each other. For the purposes of this paper, the focus will be on Mutual indemnity and hold harmless clauses.

Scope of Indemnity

Mutual Hold Harmless Indemnity (IMHH) Or Knock for Knock

The mutual hold harmless indemnity (otherwise called knock for knock), creates a situation in which parties allocate between themselves the risk or occurrence of a particular kind of loss. Here the parties are generally expressing the view that neither of them should have sole responsibility for a particular species of risk.¹⁷

T Daintith and Others, describes it thus;

*... it is thus normal for the client and the contractor to assume full liability, and give each other mutual indemnities, for claims arising out of death of or injury to their own employees and for loss or damage to their property..., regardless of any negligence or default on the part of any of the other party or its employees, agents or sub-contractors.*¹⁸

¹⁵Greg Gordon, ‘Risk Allocation in Oil and Gas Contracts’ in Greg Gordon et al (eds) *Oil and Gas law: Current Practice and Emerging Trends*’ (2nd edn, Dundee: University 2011)

¹⁶P D Cameron, ‘Liability for Catastrophic Risk in the Oil and Gas Industry’, (2013) 11 (2) *OGEL*.

¹⁷Greg Gordon, ‘Risk Allocation in Oil and Gas Contracts’ in Greg Gordon and Others (eds) *Oil and Gas law: Current Practice and Emerging Trends* (2nd edn, Dundee: University 2011).

¹⁸T Daintith, G Willoughby, and A Hill, ‘*The United Kingdom Oil and Gas Law*’, (3rd Edn, Looseleaf, 2000)

The UKCS industry players in 2002 created a Mutual Hold Harmless Scheme and prepared a Mutual Indemnity and Hold Harmless Deed¹⁹ (otherwise known as the IMHH) under the auspices of LOGIC. Clause 2.1 of the deed provides thus;

...each of the signatories shall be solely responsible for and shall defend, indemnify and hold harmless the other Signatories and the other members of their respective Groups against all Claims arising from, out of, or relating to the Services in connection with:

- a) personal injury to or sickness...; and
- b) loss of, recovery of, or damage to any Property...; and
- c) Consequential Loss...

This extends the scope of indemnity to signatories and other groups affiliated to them.²⁰ Liability here is not fault based but is accepted by the party best placed to insure against or absorb a particular type of loss. The creation of this deed was aimed at tackling the difficulty caused by ensuring that all subcontractors within a given contractual chain have appropriate risk allocation terms in place.

The mutual hold harmless regime received recognition and approval in the famous *London Bridge case*.²¹ It was described by Lord Bingham as a 'market practice' which had 'developed to take account of the peculiar features of offshore operations'.²² In *Smith International (Deutschland) GmbH v Josef Mobius Baugesellschaft GmbH & Co*,²³ the seaworthiness of a tug hired out under tow hire conditions containing a "knock for Knock" agreement was irrelevant to a determination of liability, since to permit the introduction of such would lessen the effectiveness of the "knock for knock" agreement.

¹⁹ LOGIC, '2012 Mutual Indemnity and Hold Harmless Deed' <<http://www.logic-oil.com/sites/default/files/documents/IMHH%202012%20Deed%20March%202014.pdf>> accessed 12th of April 2014; this is a replacement Deed to the 2002 Deed which expired on the 31 December 2011

²⁰ *Campbell v Conoco (UK) Ltd* [2002] EWCA Civ 704.

²¹ *Caledonia North Sea Ltd v London Bridge Engineering Ltd* [2002] UKHL 4; [2002] 1 Lloyd's Rep 553, HL.

²² *Ibid.*

²³ [2001]2 All E R (Comm) 265; [2001] CLC 1545

Application of Knock for Knock in the US

The state of Texas has anti-indemnity laws in operation.²⁴ For an indemnity provisions in a contract to be enforceable, it must express such intention in explicit terms.²⁵ Such intentions should also be “clear and conspicuous” to be enforceable.²⁶ The court in *Dresser’s case*²⁷ stated that a term or clause is conspicuous when it is printed in capital letters, or if it is larger or printed in a different colour. The interpretation of the court can however be argued to be rather too extreme. Nevertheless, it is important to stress that in view of the attitude of the courts towards such clauses, drafters of indemnity provision should bear in mind the Texas Anti-indemnity Act.

Anti-indemnity statutes also exist in Louisiana, New Mexico, Wyoming to limit or prohibit “knock for knock” relating to personal injuries and property losses.²⁸ Anti-indemnity legislation is intended to prevent the party with superior bargaining power (usually, the owner/operator) from taking advantage of the party with lesser power (contractor/subcontractor).

Also, it is worth noting that the Deepwater Horizon incident served as an alert for both the industry and regulators. Prior to the Macondo incident, the regulators have traditionally only pursued the operator for environmental related offences or breaches; however, in the case of Macondo and the recent cases in Brazil, the regulators have also pursued contractors in addition to the operator.²⁹ Steps have been taken by the

²⁴ Texas Oilfield Anti- Indemnity Statute <<http://images.jw.com/com/publications/203.pdf>> accessed 20th of April 2014.

²⁵ *Dresser Industries Inc v Page Petroleum* [1993] 853 SW 2d 505.

²⁶ *Ethyl Corp v Daniel Construction*, [1987] 725 SW 2d 705; The case of *Maxus Exploration Co v Moran Bros Inc* [1991] 817 SW 2d 50, 56; however met the express negligence test

²⁷ *Ibid* ; De Smedt Kristel and Others, ‘Civil Liability and Financial Security for Offshore Oil and Gas Activities - Final Report’, METRO (2013)

<http://ec.europa.eu/dgs/energy/tenders/doc/2013/20131028_b3-978-1_final_report.pdf> accessed 30th of April 2014.

²⁸ Gary Wickert, ‘You Break It, You Buy It: Understanding Anti-Indemnity Statutes’ (2014)

<<http://www.claimsjournal.com/news/national/2014/04/03/246663.html>> accessed 27th of April 2014

²⁹ (n 18).

United States House of Representatives to prevent Transocean reducing its liability by passing a Bill which invalidates three previous laws.³⁰ Some analyst however, disapproves with this approach in pursuit of contractors seeking to impose substantial fines and penalties; this they claim demonstrates a lack of understanding of the operational interaction between an operator and the operator's various contractors as representing a fundamental shift in liability allocation and is likely to have an impact on the long-term sustainability of the service contract industry.³¹

Third Party Indemnity

The benefit of a contract can therefore be extended to a party not signatory to it; however, it cannot impose obligations on someone who is not party to it. A stranger to the contract (i.e., a third party) will still be able to sue the person(s) whose negligence and/or breach of statutory duty caused his loss under common law.³²

The allocation of liability to third parties as between the operator and the contractor is often on a fault-finding basis rather than on a mutual hold harmless basis.³³

Indemnity and Subrogation

This arises in situations where the indemnifier takes out an insurance policy to cover the same risk that is the subject matter of the contract. In such situation, the obligation to indemnify will be extinguished (only) where there is an express obligation on the indemnifier to take out such insurance. This was the exact position of the court in *Caledonia North Sea Ltd v London Bridge Engineering Ltd*³⁴ where the court was called upon to decide whether the contractor's liability to indemnify the operator had been extinguished by payments which the operator had recovered under its own insurance.

³⁰The bill repeals the Limitation on Liability Act 1851, which meant that vessel owners were only responsible for the value of the platform after the accident as long as it could be proved that they did not act negligently. It is under this old law that Transocean attempted to cap its liability.

³¹P D Cameron, 'Liability for Catastrophic Risk in the Oil and Gas Industry' (2013) 11 (2) *OGEL*.

³²Greg Gordon, 'Risk Allocation in Oil and Gas Contracts' in Greg Gordon and Others (eds) *Oil and Gas law: Current Practice and Emerging Trends* (2nd edn Dundee University 2011).

³³ LOGIC, *General Conditions of Contract (Including Guidance Note) for Well Services* (2nd edn: 2001) <www.logic-oil.com> accessed 4th of April 2014.

³⁴ [2002] UKHL 4, [2002] 1 Lloyd's Rep 553, HL.

Exclusion Clauses

Some oil & gas contracts also contain clauses, which is aimed at excluding indemnity in certain situations.³⁵The court however maintains that, it does not matter so much what the contracting parties choose to call it, the substance and nature of the provision would rather be looked into to determine the validity of such exclusion.

The SC in *Farstad v Enviroco Ltd*³⁶ contradistinguishing an exclusion from indemnity clause laid down the following test to determining the true nature of the contract. Thus, if the clause sought to resolve the issue of 'direct exposure to the other contracting parties', it qualifies as an exclusion clause but if it sought to determine who was to bear the responsibility for 'third party exposure', it would be an indemnity.

In O&G contracts parties usually agree to exclude liability for losses resulting from;

- a) Consequential loss
- b) Wilful conduct
- c) Gross negligence

Consequential Loss

In *Motours Ltd v Eurobell (West Kent) Ltd*³⁷ it was held that although full consideration will be given to the facts of the case, the court will readily uphold a business to business exclusion of consequential loss clauses except only in unusual circumstances.

These provisions are common in operator to contractor contracts. An example is found under Clause 24 of LOGIC Standard Contract for Supply of Major Items thus,³⁸

“...the company shall save, indemnify, defend and hold harmless the contractor group from the company group's own consequential loss and the contractor shall save,

³⁵ James Carnie, Partner, Clendon Feeny, 'Contractual limitations on liability – Allocation of risk & Benefits,' <http://clendons.co.nz/uploads/seminars_and_events/LexisNexis_contractual_limitations_on_liability.pdf> accessed 20th of March 2014.

³⁶(2010) UKSC 18.

³⁷(2003) EWHC 614 (QB)

³⁸ LOGIC, 'General Conditions of Contract (Including Guidance Note) for Supply of Major items of Plant and Equipment' (2nd Edn, 2005), <http://www.logic-oil.com/sites/default/files/documents/Supply%20of%20Major%20Items%20of%20Plant%20and%20Equipment%20Edition%202.pdf> accessed 12th April 2014

indemnify, defend and hold harmless the company group from the contractor group's own consequential loss, arising from, relating to or in connection with the performance or non-performance of the contract."

The basis for this kind of exclusion is found in the celebrated case of *Hadely v Baxendale*³⁹ in which the English court held that consequential loss for the purpose of exclusion relates to situations falling under the second limb (that is 'b') thus:

"Damages recoverable for a breach of contract should be such as

- a) Might fairly and reasonably be considered as arising naturally from the breach or,
- b) Might reasonably be supposed to have been in the contemplation of the parties at the time the contract was made."

Wilful Misconduct

The standard liability allocation models often limit the operator's liability to acts of gross negligence or wilful misconduct. In a joint venture agreement, it is common for such mutual indemnity and hold harmless provision to be qualified by a statement that they will not apply in the case of wilful misconduct or gross negligence.⁴⁰ It is however advisable to define the terms, "wilful misconduct" and "gross negligence"⁴¹ as the meaning of these terms are unclear under English common law.

Other than serious breaches by its senior supervisory personnel, the operator is not liable for any damage or loss resulting from performing (or failing to perform) its duties and functions as operator.⁴² It is submitted that this approach is taken because the Operator is said to be acting for the Parties on a non-profit basis.

Gross Negligence

In *Caledonia (EE) Ltd v Orbit Valve case*,⁴³ where issues were whether the indemnity applied where P was negligent, and whether the death resulted

³⁹156 ER 145 (1854); 9 Ex 341.

⁴⁰AIPN, 2002 Model Joint Operating Agreement' <www.aipn.org> accessed 19th of March 2014.

⁴¹*The Hellespont Ardent* [1997] 2 Lloyd's Rep 547.

⁴²Jeremy Sheldon, 'Ripples from the Gulf of Mexico' (2011) *IELR* 12.

⁴³(1994) 1 WLR 221; *Walters V Whessoe Ltd and Shell Refining Co Ltd* [1968] 2 All ER 816, Where it was held that an indemnity could not lie in respect of a person's own negligence or that of his

from or was connected with the performance. The clause which the party asking for indemnity sought to rely upon read thus; "any claim... by reason of... death of an employee...resulting from or in any way connected with the performance". The court held that a party would not be relieved of the consequences of its own negligence without the use of clear words showing that it was the parties' intention.

Clauses that purport to exclude or restrict liability must however be clearly expressed within the context of the agreement as ambiguity will render such clauses ineffective.

Although the Federal Law of the US endorses the "knock for knock", there is no automatic indemnification for gross negligence.⁴⁴The position under Texas law is that, an agreement to contractually indemnify another for his own negligence, must specifically set forth that intent. This is known as the Ethyl Rule.⁴⁵ Therefore in *Adams Resources Exploration Corporation v Resources Drilling Inc.*⁴⁶ it was held that regardless of fault or negligence of the contractor the indemnitee was held to have satisfied the condition. Whereas, under Alabama law, an agreements that purport to indemnify another for the other's intentional conduct are void as a matter of public policy.⁴⁷

However, it is important to draw one's attention to the difficulty of proving these terms (gross negligence and wilful misconduct) as was the situation even in the more recent case of *IP Petroleum Company, Inc. v Wevanco Energy*,⁴⁸ where the court of appeal rejected the contention of wilful misconduct against the defendant and held inter alia thus,

...this evidence does not rise to the level of gross negligence... Nor was there evidence of wilful misconduct. Throughout the history of Texas law, 'wilful misconduct' has been defined in a manner akin to 'gross negligence.' ...a finding of wilful misconduct required evidence of 'a specific

servants unless adequate and clear words were used, or unless the indemnity could have no reasonable meaning or application unless so applied and must, therefore, be so applied by necessary implication

⁴⁴ *Becker v Tidewater Inc*, 581 F3d 256(5th Cir 2009); *Royal Ins Co v Southwest Marine*, 194 F3d 1009 (9th Cir 1999)

⁴⁵ *Ethyl Corporation v Daniel Construction Company* 725 SW 2d 705 (Tex 1987); *Mobil Oil Corp v Schlumberger*, 598 So 2d 1341, 1346 (Ala 1992)

⁴⁶ 761 SW 2d 63.

⁴⁷ *City of Montgomery v JYD Intern Inc*, 534 So 2d 592, 594 (Ala 1988)

⁴⁸ 116 SW 3d 888 (Tex App- Houston).

intent by IP Petroleum Company Inc. to cause substantial injury to Plaintiffs.’ We hold that the evidence is legally insufficient to support the jury's finding.

Limitation of Liability

These are clauses that seek to limit a party’s liability by reference to a total sum payable.⁴⁹It is sometimes described as a “liability cap” and is a common feature in oil and gas contracting. This clause limits a party’s liability to a total sum payable. It allows the contractor to estimate beforehand and with precision its maximum exposure to losses.⁵⁰

A liability clause has the advantage of shielding a contractor against losses, which may be more than he can bear and from challenges thus providing a second line of defence against indeterminate and disproportionate liability. Such liability cap may not however be extended to third parties unless there are clear words to that effect.⁵¹

However, in *Westerngeco Ltd v ATP & Gas (UK)Ltd*,⁵² Aikens J held that liability to pay damages to a third party was not subject to the cap established in the aggregate liability clause of the services agreement executed with the project.

Judicial Interpretations

Contextual

This is otherwise known as the traditional approach of interpretation. Here the court takes into consideration the totality of the written document sought to be interpreted and thus, does so objectively.⁵³ This position was affirmed by Lord Hoffman in *Investors Compensation Scheme Ltd v West Bromwich Buildings Society*,⁵⁴ where it was stated that, “the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean”.

⁴⁹Greg Gordon, ‘Risk Allocation in Oil and Gas Contracts’ in Greg Gordon and Others (eds), *Oil and Gas law: Current Practice and Emerging Trends* (2nd edn, Dundee University 2011).

⁵⁰*Ibid.*

⁵¹*Ibid.*

⁵² [2006] EWHC, 1164.

⁵³K Lewison, *The Interpretation of Contracts* (2nd edn, Sweet & Maxwell 1997).

⁵⁴(1998) 1WLR 896.

Contra Proferentem

If there is any ambiguity, the courts will interpret such ambiguous contractual terms in the manner least favourable to the party seeking to rely upon them.⁵⁵ The English law have applied the *contra proferentem* rule for the interpretation of liability clauses.⁵⁶

Additionally, where a clause is unclear or ambiguous⁵⁷ or a provision is deemed to constitute exclusion clause⁵⁸ and therefore fails one of the tests set out in Unfair Contract Terms Act of 1977 (UCTA), the risk will fall under the general law and will be allocated not as party intended, but in accordance with risk allocation under common law. Therefore, while drafting contracts, parties must ensure that the language/words used are very clear and unequivocal.⁵⁹

Exclusion of Liability vs Limitation of Liability

The courts generally look to restrict an exclusion clause in anyways, particularly where there is unequal bargaining power. Although this usual approach 'does not entitle the court to reject the exclusion clause however unreasonable the court may think it is, if the words are clear and fairly susceptible of one meaning only,'⁶⁰ whereas in the case of a limitation clause, it has been held in *Ailsa Craig Fishing Co Ltd v Malvern Fishing Co*,⁶¹ that rules of construction that apply when interpreting clauses that completely exclude particular heads of liability should not be applied strictly to clauses merely placing a limit on liability.

Conclusion

It has been said that "[the common] law is the enforcement of common sense: or, at any rate, it should be."⁶² Contracts made between sophisticated parties, represented by counsel, who on their own freewill, decided after extensive negotiation to allocate risk in a carefully crafted written agreement, are fundamentally different from the contracts made

⁵⁵E Peel, 'Whither Contra proferentem?' in A Burrows and E Peel, *Contract Terms* (2007, Oxford-Norton Rose Law Colloquium).

⁵⁶Greg Gordon, 'Risk Allocation in Oil and Gas Contracts' in Greg Gordon and Others (eds) *Oil and Gas law: Current Practice and Emerging Trends* (2nd edn, Dundee University 2011).

⁵⁷ *EE Occidental Ltd v Orbit Valve Co*, *Court of Appeal* [1995] 1 All E R 174.

⁵⁸ *Farstad Supply AS v Enviroco Ltd* [2010] UKSC 18, [2010] SCLR 379.

⁵⁹ London Bridge case.

⁶⁰ *Photo Producton Ltd v Securicor Ltd* (1980) AC 827, Per Lord Diplock.

⁶¹(1983) 1 WLR 964.

⁶² *SCM (UK) LTD v W J Whithall & Son Ltd* [1971] 1 QB 337, 344 (UK).

by consumers who buy cars, or sign consents allowing their children to participate in rafting excursions.⁶³

The O&G industry has been able to develop a number of contracting practices to regulate and manage its inherent risks. It is not however entirely true to say that a well drafted indemnity and hold harmless clause modifies or overrides the common law approach to risk allocation.

Standard form or model contracts should be used sparingly as each project seems to be different and a standard form, although a useful starting point, must be adapted precisely to the circumstances of each case.⁶⁴The piper alpha incident, has thrown light on the importance of indemnity clauses in contracts emanating from the UK offshore O&G industry. It can be concluded that, in all the cases emanating from the piper alpha disaster, the courts have adopted a similar position and habit of interpreting the language of the contract strictly to represent exactly the presumed intention of the parties at the time of contracting. Both the London Bridge case and the Orbit Valve have demonstrated parties intend the true meanings of their agreements as indicated by the wordings of their contracts.

⁶³Glenn D Well and Others, 'Contracting to Avoid Extra-Contractual Liability—Can Your Contractual Deal Ever Really be the "Entire" Deal?' (2007) <<http://www.weil.com/files/Publication/563ccf98-648d-4e5b-b3e5-129805230615/Presentation/PublicationAttachment/fb77618a-f943-4797-98a1-2a69d92a4522/Extra-Contractual%20Liability%20Article.pdf>> accessed 20th of March 2014.

⁶⁴ Toby Hewitt, 'Who is to Blame? Allocating Liability in Upstream Project Contract' [2008] 26 *J Energy Nat Resources L*, 177.