



# Legal Brief

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## Intro to Gas Company Contracts Involving Work in the Marcellus Shale Region

Has your Company been involved in any Marcellus Shale work yet? The development of the Marcellus Shale region is occurring rapidly. Over the past eighteen months, our firm has reviewed dozens of gas company agreements for construction work relating to Marcellus Shale gas extraction. Most of the agreements are similar and take the form of Master Service Agreements (“MSAs”). This article will summarize the key provisions found in most MSAs to assist you in becoming familiar with them. Unfortunately, most companies present their agreements on a “take it or leave it” basis, which means that extensive changes are not usually welcome or accepted.

In these agreements, the parties are referred to as “the Contractor” and “the Company.” Most take the form of an MSA, which means its terms will govern all work that the Contractor performs while the agreement is in effect. There will not be a separate agreement signed each time work is requested. Typically, the MSA remains in effect until terminated – with or without cause – by either party, usually by giving written notice to the other party a certain number of days before the termination becomes effective.

The most unique aspect of these MSAs is the indemnity provisions, which are often referred to (but not explicitly labeled in the agreement) as “knock for knock” indemnities. Under a knock for knock indemnity, each party assumes complete responsibility for its own personnel and property, regardless of fault. Thus, if an employee of the Contractor is injured and files suit against the Company, the Contractor must defend and indemnify the Company regardless of who was at fault for causing the damage or injury. For example, if an explosion occurs as a result of the Company’s negligence and an employee of the Contractor is injured and sues the Company, the Contractor must pay for the defense and any liability that the Company incurs – even though the explosion was purely caused by the Company’s negligence. Thus, the Contractor’s obligation to defend and indemnify the Company exists even though the injury to the employee may have been caused entirely by the Company’s negligence or willful misconduct.

Similarly, if the Contractor is sued by an employee of the Company, the Company is required to defend and indemnify the Contractor – even if the injury or damage was caused by the Contractor’s negligence. Knock for knock indemnities are extremely common in the drilling and gas industries, and the Companies are usually unwilling to accept modifications. Our firm has had some success in persuading several of the Companies to accept limited modifications to these clauses which limit their breadth. The indemnity obligations in these agreements differ from typical indemnity provisions in which liability follows control or fault.

Payment under the MSAs is typically based on the Contractor’s most recent price list or schedule. Electronic invoicing is usually required. Payment is typically made within 30 days of the date that the invoice is submitted. The Company can withhold any disputed amount – usually after providing the Contractor with written notice of the disputed portion; the undisputed portion is paid. To guard against overpayment, most MSAs require the Contractor to permit the Company to inspect or audit its books and records.

Since most of the gas companies are located in Texas, Louisiana or Oklahoma, the MSAs require that all disputes be resolved in the Company’s home state. This can make it extremely difficult and costly to pursue legal action against the Company. Many of the agreements also contain detailed confidentiality provisions prohibiting the Contractor from disclosing maps, data etc. that they come into possession of during the work.

Gas company MSAs contain many more provisions than are mentioned here. This short article is only designed to highlight the handful of provisions that are typically of interest to contractors working with oil and gas companies. It is recommended that you have your counsel review the specific agreement(s) that your company is asked to sign.