

Important Insurance Coverage & Indemnification Issues in the Oil & Gas Industry

Sarah E. Stogner

Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, LLC
Energy Centre - 1100 Poydras Street - Suite 3100
New Orleans, Louisiana 70163
Telephone: (504) 585-3845 Fax: (504) 585-3801
stogner@carverdarden.com - www.carverdarden.com

The next 60 minutes...

Refresher on insurance policy fundamentals relevant for oil and gas industry



Short lecture on bad indemnification provisions

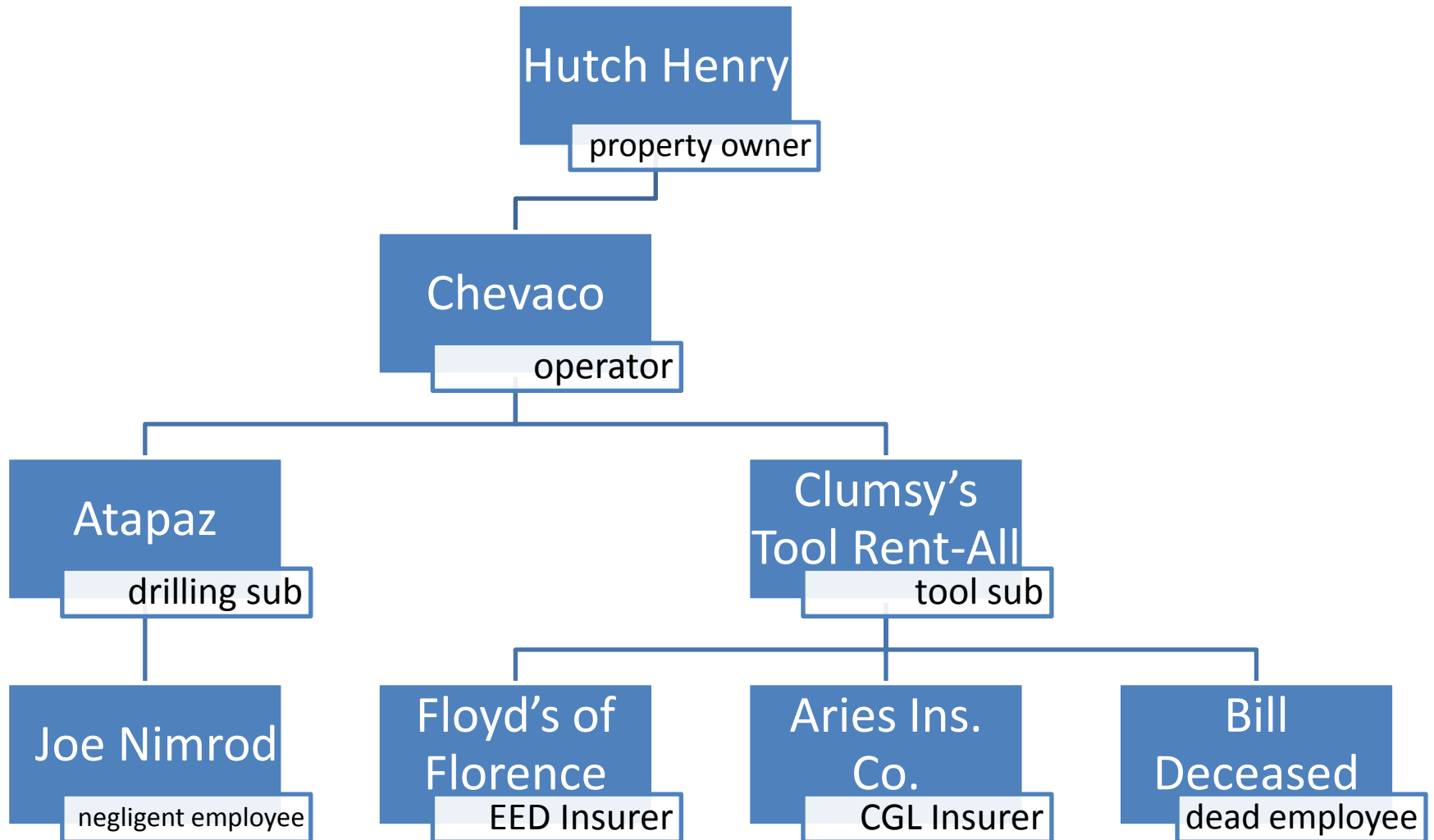


Some practical tips to make your business less susceptible to litigation

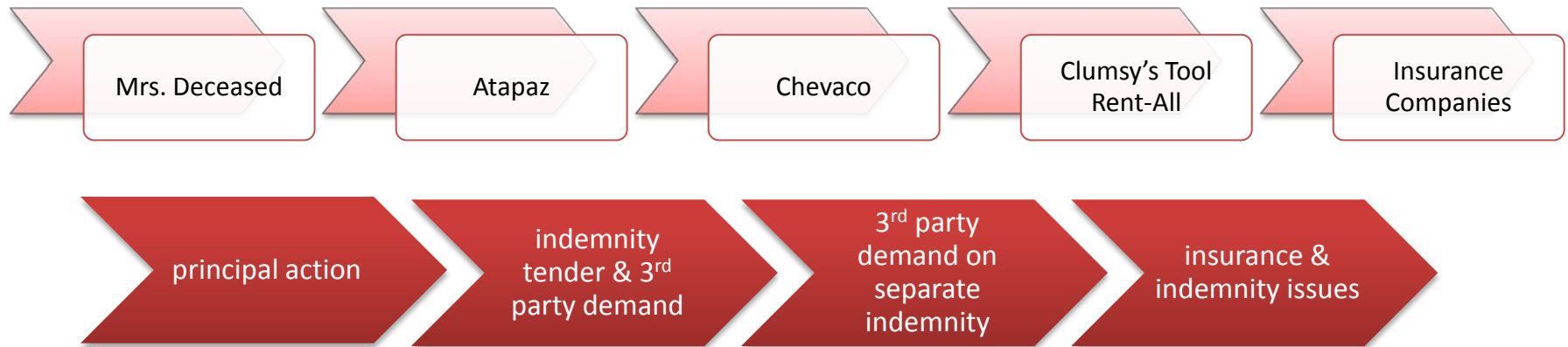
The “incident”



The Parties



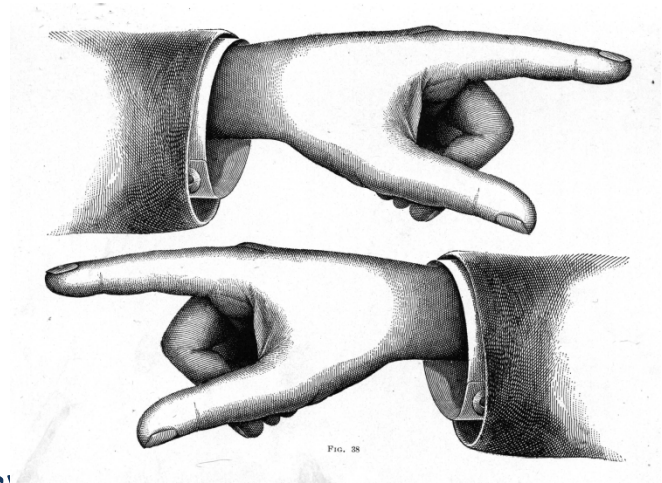
The Drama



Insurance

★ READ THE POLICY

- Policy anatomy
- 1st party vs. 3rd party
 - Well control & CGL
- Claims vs. occurrence policy
- Burden of proof – coverage, exclusions, exceptions
- Other insurance
- overlapping layers & prolonged events



Indemnity Generally



- Simply a right to reimbursement
 - indemnifying party = indemnitor (pays)
 - indemnified party = indemnitee (receives payment)
- Generally indemnity where indemnitee is indemnified against own negligence is strictly construed and will not be construed to indemnify an indemnitee against losses resulting to him unless *express* and *unequivocal*



knock for knock

Each party shall defend any third party claim against the other party arising from the death of or physical injury to any person or damage to the indemnified party's property to the extent caused, in whole or in part, by the negligence or intentional conduct of the indemnifying party or its agents or employees, and indemnify and hold harmless the other party and its respective officers, directors and employees from and against damages, liabilities and reasonable costs and expenses, including reasonable legal fees incurred in connection therewith.

- Look closely at what types of liabilities are covered – torts, contracts, any and all...

Indemnity

- Goal - reduce litigation expenses by agreeing to allocate certain risks between the parties ahead of time
 - All risk of losses to a defined group's people and things in exchange for the other party doing similarly for a different group
 - Leveraged party has other party agree to assume all risk of loss arising out of the event
 - Consider anti-indemnity legislation
- Reality – usually more litigation

Anti-Indemnity Statutes

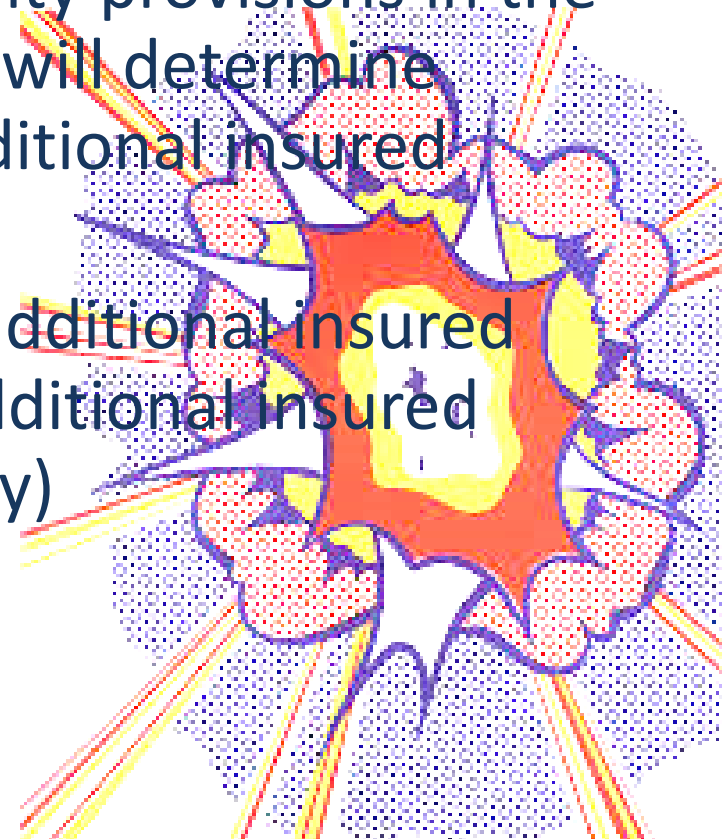
Louisiana

- indemnification generally allowed – strict construction
- Louisiana Oilfield Indemnity Act
 - La. R.S. 9:2780
 - statutory prohibition against the enforcement in a personal injury/wrongful death for indemnitee's own negligence
 - exceptions

- Texas
 - indemnification generally allowed
 - must be express and conspicuous
 - Texas Oilfield Anti-Indemnity Statute
 - Tex. CPRC § 127.001-127.007
 - prohibits agreement to indemnify a person against liability that is caused by their sole or concurrent negligence for an agreement pertaining to a well for oil, gas, or water or to a mine for a mineral
 - exceptions

Insurance & Indemnity collide

- *In re Deepwater Horizon, Ranger Ins. Ltd. v. Transocean*, No. 12-30230 (5th Cir. 3/1/13)
 - insurance policies, not indemnity provisions in the underlying services contract – will determine whether a third party is an additional insured under the policies
 - only policy can limit scope of additional insured status (must clearly provide additional insured status for vicarious liability only)
 - still unanswered questions



Concluding Words of Wisdom

- READ your policy
- READ your contracts
- make sure congruent
- eliminate vague language
- invest on the front end to avoid costly disputes after an incident