When Good Gas Goes Bad: Gas Field Development Dispute

International Arbitration, Asia–Pacific

By Chuck Freeny, P.E.

A well-known integrated energy company developed an offshore gas field in Australia using an experienced engineering and construction firm. The work scope included an offshore platform, a lengthy subsea two-phase natural gas pipeline, onshore pipelines, and an onshore cryogenic natural gas processing facility. As development of the field development neared completion, drilling and testing of the production wells revealed that the produced gas contained contaminants at levels outside the contract design basis.

The owner instructed the contractor to demobilize while the facilities were reconfigured by others to handle the new natural gas composition. Ultimately, a multitude of disputed issues related to the lump-sum Engineer–Procure–Install–Construct (EPIC) contract went to international arbitration. As is typical with engineering and construction-related disputes, several claims and counterclaims under the EPIC contract were made.

- Warranties and guarantees for workmanship and construction defects
- Performance and delay damage provisions
- Liability for basis of design errors
- Scope of work type – functional or prescriptive
- Geotechnical/subsoil liability
- Change order provisions

As experts to this arbitration, Baker & O’Brien consultants analyzed an extensive volume of project records in order to determine the value of construction defects, liquidated damage liability, effects of the contaminants upon the processing facilities that had been installed, as well as the ability of the contractor to perform its contractual responsibilities, since the reconfiguration work was performed by others. Baker & O’Brien provided several reports and arbitration testimony, including an expert witness conferencing (“hot tub”) session.

Our consultants’ interpretation of the specific contractual provisions and language used in these provisions, based on their expertise as well as experience working for both international energy companies and EPC firms, was relied upon by the arbitration panel in reaching its final decision.

EPIC contracts are commonly employed in field developments. Key features of EPIC contracts that are important to owners and contractors typically include the following:

- Provisions for mechanical and performance completion
What is the Present Value of an Idea?

Jury Trial, United States

By Kevin Waguespack

The estate of a man (who was the unfortunate victim of a traffic accident) brought a lawsuit to recover a large monetary claim related to two projects that the decedent claimed to be pursuing at the time of his death. The plaintiffs claimed that the decedent’s efforts to develop a refined products storage terminal and an underground natural gas storage facility had resulted in significant tangible value that should be realized by the estate.

The tasks and milestones that are typical of most energy projects include: land acquisition, permitting, financing, customer commitments, engineering design, construction, and commissioning of the project. The development process often requires re-evaluation of the project at each stage of development. Value is created as a project achieves these milestones.

In the case of the oil and gas storage facilities, Baker & O’Brien consultants established a project evaluation framework and determined whether progress had resulted in tangible value. Key questions included:

• Was there market demand for these projects?
• What were the prospects for financing?
• How much remaining work was required to establish the enterprises?

The jury reviewed the evidence submitted at trial and its verdict reflected a significant consideration of Baker & O’Brien’s testimony.

Static Electricity Sparks Dispute

Pre-Arbitration Mediation, Asia–Pacific

By Alan Reynolds

Kerosene is used in a solvent extraction process to recover uranium and copper from mine “tailings.” A large copper and uranium mine in the Asia-Pacific region experienced two damaging fires at its solvent extraction facility. The root-cause analysis determined that both fires were caused by static electricity generated by kerosene flowing inside non-metallic piping. (This mechanism is similar to the risks and cautions associated with fueling vehicles or airplanes.)

Following the first fire, the owner replaced the facilities in-kind. However, after a second fire occurred shortly after resuming operation of the rebuilt facility, the owner determined that a significantly different – and more expensive – design was required to ensure the safety of the plant. The insurance policy reimbursed replacement in-kind costs, but not “betterment” costs. The owner claimed that a policy clause related to changes in law and regulations should reimburse the additional rebuild costs – that new knowledge within the industry regarding static electricity, hydrocarbons, and safety measures was relevant. A dispute ensued over the insurer’s liability for the additional rebuild costs. The question was – “Were there relevant changes in law or regulations (and industry codes) with respect to static electricity hydrocarbon handling?”

Baker & O’Brien’s consultants applied their considerable expertise in applicable engineering codes, normal industry practices, and safety aspects of hydrocarbons and static electricity to opine on the question and aid the interpretation of the insurance policy language. The Baker & O’Brien team, which included experts in mining and electrostatics, prepared a comprehensive report and assisted legal counsel throughout the mediation process.
Consulting Support for Complex Commercial Disputes

When faced with complex commercial disputes in the energy-related industries, clients often turn to Baker & O'Brien for its independent and objective support. For over 20 years, the firm’s consultants have employed their engineering knowledge, industry experiences, and commercial acumen to provide assistance on a wide range of matters. Our project experience includes disputes involving operational incidents, standards of care, asset valuation, commercial supply terms, product quality, large engineering and construction projects, and intellectual property.

Our clients include many of the world’s largest law firms, insurance providers, and operating companies. Law firms rely upon Baker & O’Brien to evaluate technical and commercial aspects of a case and provide expert testimony. Our analyses, conclusions, and expert testimony have been heard by judges, juries, and arbitration panels around the world. On insurance matters, clients rely upon Baker & O’Brien’s assistance for investigation of industrial accidents, and quantification of resultant property damage and business interruption losses. We are also called upon to assist insurers in subrogation actions by evaluating causation theories and claims for damages.

We would welcome the opportunity to discuss our qualifications in more detail as they relate to your specific area of interest.