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The Role of Emergency Preparedness in "Good Oilfield Practice"

William M. Laurin

Of necessity, what constitutes "good oilfield practice" for oil and gas operators constantly evolves to reflect changing economic conditions, technological advances, regulatory amendments and Court decisions. A prudent operator must be cognizant of this landscape and be ready to adapt and respond in order to limit its own losses, as well as its potential liability to its working interest partners under standard operating arrangements.

The recent Alberta *Safety Boss*[1] decision is a timely reminder that "good oilfield practice", and prudent risk management, dictates that oil and gas operators have in place pre-negotiated master service agreements with emergency service providers prior to catastrophic events occurring.

The *Safety Boss* Decision

For this discussion, the facts in the *Safety Boss* decision are only important in that the circumstances giving rise to the situation are commonplace, and could happen to almost any operator. The plaintiff, Petrobank, successor in interest to Barrington and Sonoma following a receivership, acquired certain assets including a remote northwest Alberta sour gas well known as Shekilie 5-31-116-10 W6M (the "Well"). The Well was drilled in 1983 and when tested produced 7.5 million cubic feet of gas a day, but was located too far from pipelines to be developed economically. It remained suspended from 1984 until June 11, 2001 when a blowout occurred. Soon thereafter representatives of Petrobank met with blowout specialists Safety Boss and on the morning of June 12 they flew to Rainbow Lake together, and took a helicopter to the Well site, all without entering into a formal, written services agreement.

By the time the Well was under control and Petrobank had cleaned up the environmental damage, it had spent $24 million. It took twenty-nine days to control the Well, and Safety Boss charged Petrobank $2.3 million for its efforts. In total, the well control operation, including payments to another blowout specialist hired by Petrobank to replace Safety Boss after their relationship soured, cost Petrobank over $13 million. Petrobank successfully argued that its well control and environmental cleanup costs were higher than necessary because of breaches of contract and negligence by Safety Boss.

In the Court's view, Safety Boss held itself out as being the premier well control company in Alberta and charged a premium price for those services. It failed, however, to handle the well control properly, and that failure resulted in liability in negligence for Safety Boss and damages in the amount of $1.6 million to Petrobank.

Commercial Consequences of the *Safety Boss* Decision

Whether or not the Court's analysis and findings are agreed with, the inevitable result is a far more cautious approach by emergency service providers in assisting operators following catastrophic events. As a result of the decision in *Safety Boss*, in the future

William M. Laurin
403.218.7534
william.laurin@lawsonlundell.com

[1] http://www.albertacourts.ab.ca/jdb/2003-/qb/civil/2012/2012abqb0161.pdf

when a sour gas well blows out, endangering the environment and neighboring residents, the prudent service provider will be reluctant to proceed without a written agreement in place. Instead of helicopter rides and boots-on-the-ground within the first 12 hours following a crisis event, all that an operator may receive is a draft of a 50 page services agreement setting out in painful specificity the service provider's narrow standard of care and fixed indemnity limits. It further follows that in this scenario, the relative disparity in strength of negotiating position clearly favours the service provider in respect of that standard of care and those indemnity limits as millions of dollars a day in lost production, environmental clean-up costs, and negative publicity threaten the operator's bottom line.

Prudent Practice for Operators

Rather than waiting for the occurrence of a catastrophic event to expose an operator's lack of emergency preparedness (and its resultant weakened negotiating position), a prudent practice for operators is to enter into, and keep current, master services agreements with the providers of those emergency services. It is incumbent on each operator to assess the range, character and severity of risks associated with their specific activities, and have in place reasonable commercial relationships that will address any emergencies resulting from catastrophic events. Further, given the recent judicial expansion of what constitutes operator "gross negligence" under the 1990 CAPL Operating Procedure in the *Adeco*[2] and *Trident*[3] decisions, an operator may be liable to its non-operators for any failure to maintain such relationships.

For more information please contact William M. Laurin at 403.218.7534.

Vancouver
Suite 1600, Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
Canada V6C 3L2
(T) 604.685.3456
(F) 604.669.1620

Calgary
Suite 3700, 205-5th Avenue S.W.
Bow Valley Square 2
Calgary, Alberta
Canada T2P 2V7
(T) 403.269.6900
(F) 403.269.9494

Yellowknife
P.O. Box 818
Suite 200, 4915 – 48 Street
Yellowknife, Northwest Territories
Canada X1A 2N6
(T) 867.669.5500 Toll Free: 888.465.7608
(F) 867.920.2206

[2] http://www2.albertacourts.ab.ca/jdb/2003-/ca/civil/2008/2008abca0214.pdf
[3] http://www.albertacourts.ab.ca/jdb/2003-/qb/civil/2012/2012abqb0242.pdf