

Contracts in the Patch: Thinking Ahead About Litigation

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In the high-stakes world of oil and gas operations, contracts are often the first and best line of defense against costly disputes. Proactively addressing litigation risk at the drafting stage can protect business relationships, reduce expenses, and streamline resolution when disagreements arise. Below are five key considerations to keep in mind when drafting and negotiating contracts in the patch, as recently presented at [GableGotwals' Sixth Annual Energy Market Drivers and Current Legal Issues Seminar](#).

Top 5 Considerations When Drafting Contracts

1. Be Cautious with Performance Timelines

Strict deadlines can create traps if not carefully defined. Clarify whether timelines are in business days or calendar days, and outline the consequences for non-compliance. If the timeline isn't essential, consider using flexible language to avoid unnecessary breach claims.

2. Dispute Resolution Procedures Should Be Practical, Not Overly Rigid

While structured dispute resolution steps can prevent knee-jerk litigation, overly prescriptive procedures may delay outcomes and complicate compliance. A more flexible approach—such as allowing immediate litigation or streamlined mediation—can sometimes serve all parties better.

3. Weigh the Pros and Cons of Mandatory Arbitration

Arbitration offers privacy, speed, and finality, but it comes at a cost—literally and procedurally. Consider whether arbitration could be optional instead of mandatory, especially if budget, discovery needs, or appeal rights are important.

4. Avoid Ambiguous or Undefined Terms

Ambiguity leads to litigation. Be specific in defining services, obligations, and roles, especially when using templates or jargon. A vague term like “services” once led to a weeklong jury trial. Don't assume shared understanding where interpretation can vary.

5. Think Strategically About Attorney Fees and Force Majeure

In Oklahoma, contracts for labor or services presume attorney fees are recoverable unless expressly excluded. 12 O.S. § 936. This can significantly affect litigation strategy and settlement incentives. Similarly, ensure force majeure clauses are tailored to potential operational risks, as courts interpret them strictly.

Conclusion

Contracts are more than business paperwork—they are potential litigation roadmaps. Thoughtful drafting, with an eye toward dispute prevention and strategic positioning, can save substantial time and money down the road. When in doubt, ask: “If this goes to court, how will this clause play out?”

If you have any questions, please contact any member of GableGotwals’ [Energy, Oil & Gas team](#).



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