



## Defense Means Defense: Fifth Circuit Affirms Contractual Risk Allocation in Anadarko

On March 3, 2026, the U.S. Court of Appeals for the Fifth Circuit issued an important decision in *Anadarko Petroleum Corp. v. Alternative Environmental Solutions, Inc.*, reinforcing the enforceability of contractual defense and indemnity provisions in oilfield service agreements – and clarifying limits on attorney’s fee recovery.

### Background

Anadarko and Alternative Environmental Solutions, Inc. (AES) entered into a Master Services Contract (MSC) for environmental remediation work. The MSC contained a Texas choice of law and venue provision and required AES to defend and indemnify Anadarko for claims arising from AES’s violations of applicable laws.

Years later, AES’s president discovered that another AES owner, subcontractors, and others had engaged in a scheme to fraudulently overbill Anadarko. After internal fallout and related litigation, AES’s president sued Anadarko in Louisiana state court, alleging that an Anadarko employee participated in the fraud and that Anadarko was vicariously liable.

In response, Anadarko filed a declaratory judgment action in U.S. District Court for the Southern District of Texas seeking confirmation that AES owed it a duty to defend, a duty to indemnify, and reimbursement of attorney’s fees. The district court granted summary judgment for Anadarko, and AES appealed.

## **Key Holdings**

### **1. Texas Law Applies – Not Louisiana Law**

The Fifth Circuit enforced the MSC's Texas choice-of-law provision, rejecting AES's argument that Louisiana law (and the Louisiana Oilfield Anti-Indemnity Act) should apply. The court found that:

- Texas had the more significant relationship to the dispute;
- Louisiana did not have a materially greater interest; and
- Applying Texas law did not violate Louisiana public policy because the indemnity provision did not involve death or bodily injury – the scope of Louisiana Oilfield Anti-Indemnity Act.

### **2. Indemnity and Defense Provisions Are Enforceable**

The court upheld AES's obligation to defend and indemnify Anadarko, holding that:

- The contract was not void as against public policy;
- Anadarko sought indemnity for AES's violations, not for its own employee's alleged misconduct; and
- Claims "arising in connection with" AES's fraud fell squarely within the indemnity language.

Judicial estoppel also did not apply, even though Anadarko had litigated in Louisiana state court for years before seeking declaratory relief in Texas.

### **3. Limits on Punitive and Exemplary Damages**

While affirming Anadarko's right to defense and indemnity, the Fifth Circuit vacated the portion of the judgment that could be read to require AES to indemnify Anadarko for punitive or exemplary damages. The MSC expressly excluded those damages, and the court remanded for the judgment to be clarified accordingly.

### **4. Attorney's Fees: Mixed Result**

The court drew an important distinction on attorney's fees:

- Fees incurred in the underlying Louisiana lawsuit are recoverable, if at all, as actual damages for breach of the duty to defend, not under Rule 54. The district court's award of those fees was vacated.
- Fees incurred in the Texas declaratory judgment action were properly awarded and affirmed.

The court also rejected arguments that Anadarko failed to segregate fees or prove reasonableness.

## **Why This Decision Matters**

This opinion provides meaningful guidance for energy companies and service providers:

- Courts will enforce choice of law and indemnity provisions as written, even in multi-state oilfield disputes.
- The Louisiana Oilfield Anti-Indemnity Act has limits, particularly where claims do not involve bodily injury.
- Defense obligations can be broader than indemnity obligations, especially where punitive damages are excluded.
- Companies seeking to recover defense costs should carefully plead them as breach of contract damages, not merely as attorney's fees.

## **Takeaway**

The Fifth Circuit's decision underscores the importance of clear, carefully drafted indemnity and defense provisions in oilfield service contracts – and confirms that courts will hold parties to those bargains, even years later and across jurisdictions.

*This blog was drafted by [Amy Mitchell](#), an attorney in the Spencer Fane Houston, Texas office. For more information, visit [www.spencerfane.com](http://www.spencerfane.com).*

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