

# *Creative Approaches to Offshore A&D Transactions*

## *What Forms of Security and Performance Guarantees Work Best*

Paul J. Goodwine  
Looper Goodwine P.C.

[pgoodwine@loopergoodwine.com](mailto:pgoodwine@loopergoodwine.com)



# *Creative Approaches to Offshore A&D Transactions*

*What Forms of Security and Performance  
Guarantees **May Be Needed to Successfully  
Close Acquisitions in Today's World***

Paul J. Goodwine  
Looper Goodwine P.C.

[pgoodwine@loopergoodwine.com](mailto:pgoodwine@loopergoodwine.com)



# Initial Thoughts

- What is going on with A&D in today's environment?
- Enhanced importance of Security and Performance Guarantees.
- Brief Review of Evolution (from my perspective).
- No magic elixir.
- Creativity and thinking fresh thoughts is key.





# Parties to the A&D Transaction

- Who the parties are is vitally important.
- Characteristics of Seller and Buyer – always different.
- Motivations of Buyer and Seller - always different.
- Major Integrated Oil and Gas Companies.
- Independent E&P Companies
  - Small, Medium, and Large
- Newcos.



# Pricing and Valuation Analysis

- Pricing and valuation analysis comes first.
- Scope and cost of security and performance guarantees often affect pricing and valuation.
- What to Analyze:
  - Reserves
  - P&A Valuations (Buyer, Seller, BSEE) and timing of expected P&A
  - What partners are in the Assets?
  - Operated v. non-operated Assets
- *Is the goal simply to procure and provide security, or to encourage and support P&A activities for everyone's benefit?*



# Creativity through Seller Financing

- Carrot and stick concept.
- Complete seller financing of P&A?
- Partial financing of P&A.
- Direct payment:
  - At Closing.
  - Over time.
  - Upon completion of all or specific aspects of P&A.
  - To support P&A work.
  - At cost or at stipulated amounts.
- Credit to Purchase Price.
- Distinctions between long term and short term P&A.



# Building Up Security Over Time

- Carrot and stick (again).
- Straight Line.
- Corporate obligations.
- ORRI and Production Payments.
- PV 10 of P&A.
- Thresholds.
- Risk Analysis.
- Redeterminations
  - Ceilings and Floors

# Who pays for the Financial Assurance?

- Pricing and Indemnity Analysis.
- Seller Support or Buyer on Own.
- What does the Market Want?







# Distinctions between Long Term and Short Term P&A

- How many Tranches?
- How many Escrows?
- Shift Security from Short to Long Term as P&A work accomplished?
- Release collateral as P&A is accomplished.
- Draw downs on Security and Periodic Release:
  - Thresholds
  - Event based
  - Hold backs

# Escrows, Trusts, and Surety Bonds

- Distinctions
  - Pricing
  - Utilization
- Blend.
- Different Assets.
- Short Term v. Long Term.
- Swap Outs.





# Escrows vs. Trusts

- Pick your Poison
  - Tax Treatment
  - Balance Sheet Treatment
- Security.
- Bankruptcy Considerations.
  - Production Payments.
  - ORRI's.



# BOEM and BSEE Issues

- Need to account for BSEE Assessments and changes over time.
- Credit for BOEM Bonds?
- BOEM 1<sup>st</sup>, Seller 2<sup>nd</sup>?
- Mirror Bonds.
- Layering of Bonds.
- Nuances and Pitfalls.



# Dual Obligee Security

- Definitions primarily from BOEM Supplemental Bond Form.
- Applies to Leases and ROWs.
- Referred to as "Multi-Obligee Performance Bond."
  - "BOEM Obligee"
  - "Seller Obligee"
  - "Co-Obligees"



# Dual Obligee Security

continued ...

- Points of Negotiation and Resolution:
  - Recite capacity and liability issues for co-obligee to BOEM.
    - e.g., predecessor lessee and/or predecessor ROW Holder.
  - Notice of Default Nuances.
  - Timing to Confirm Work to be Accomplished Nuances.
  - Use of Bond Proceeds.
  - Surety Rights.



# Dual Obligee Bond Specific Provisions

- 1.3** *Decommissioning Obligation(s)* means any decommissioning obligation(s) or requirement(s) imposed on both the Principal and the Seller Obligee by, or arising from (i) the Lease, (ii) any regulations of the Department of the Interior, or (iii) any Instrument issued, maintained, or approved under the Outer Continental Shelf ("OCS") Lands Act (43 U.S.C. §§ 1331 et seq.), related to the record title, operating rights, or ownership interests in the Lease transferred to Principal pursuant to the Assignment Transaction and that accrued before the Principal acquired its record title, operating rights, or ownership interests therein and remained unperformed on the date that BOEM Obligee approved assignment of such interests from Seller Obligee to Principal;

# Dual Obligee Bond Specific Provisions

- 1.3 *Decommissioning Obligation(s)* means any decommissioning obligation(s) or requirement(s) imposed on both the Principal and the Seller Obligee by, or arising from (i) the Lease, (ii) any regulations of the Department of the Interior, or (iii) any Instrument issued, maintained, or approved under the Outer Continental Shelf ("OCS") Lands Act (43 U.S.C. §§ 1331 et seq.), related to the record title, operating rights, or ownership interests in the Lease transferred to Principal pursuant to the Assignment Transaction and that accrued before the Principal acquired its record title, operating rights, or ownership interests therein and remained unperformed on the date that BOEM Obligee approved assignment of such interests from Seller Obligee to Principal;





# Dual Obligee Bond Specific Provisions

**3.15** Any decommissioning obligations associated with the Lease and for which Seller Obligee has no liability shall be covered by separate and distinct financial assurance provided to BOEM Obligee by Principal or another party.



# Dual Obligee Bond Specific Provisions

- 3.1** Nothing in this Bond expands the obligations and liabilities of Seller Obligee associated with the Lease pursuant to contract or law, and all such obligations and liabilities will be limited to the obligations and liabilities that accrued while Seller Obligee was a Lessee, as that term is used herein.



# Dual Obligee Bond Specific Provisions

- 2.12 Prior to calling the Bond pursuant to Paragraph 2.11, BOEM Obligee will provide Seller Obligee with thirty (30) calendar days' advance written notice ("***BOEM Notice Period***") of BOEM Obligee's intention to call the Bond (or portion thereof) and stating the scope of the Decommissioning Obligations upon which Principal has defaulted. If, within the BOEM Notice Period, Seller Obligee commits in writing to BOEM Obligee to timely undertake the requisite activities to address the Decommissioning Obligations upon which Principal has defaulted, BOEM Obligee will direct the Surety to pay to Seller Obligee the proceeds of the Bond (or portion thereof). Seller Obligee will utilize the proceeds of the Bond exclusively to diligently and continuously prosecute the



# Dual Obligee Bond Specific Provisions

**2.14** Upon Default, Seller Obligee may call the Bond by demand upon the Surety if (a) Seller Obligee provides BOEM Obligee with thirty (30) calendar days' advance written notice ("*Seller Notice Period*") of its intention to call the Bond (or portion thereof), and (b) agrees in writing to use the proceeds of the Bond exclusively to diligently and continuously prosecute the performance of the requisite operations and activities until such time as the Decommissioning Obligations then requiring performance are satisfied. Seller Obligee hereby acknowledges that this Bond and the procedures relating to utilization of Bond proceeds do not reduce or otherwise modify its regulatory liabilities associated with the Decommissioning Obligations.



# Dual Obligee Bond Specific Provisions

- 2.16** If Seller Obligee receives bond proceeds under Section 2.12 or withdraws Bond proceeds under Section 2.15, but fails to commence performance of the Decommissioning Obligations, as specified in the regulations at 30 C.F.R., Part 250, subpart Q, within ninety (90) calendar days of receiving/withdrawing the Bond proceeds, or as otherwise mutually agreed in writing, Seller Obligee shall immediately tender to BOEM Obligee the proceeds of the Bond to arrange for performance of the requisite activities to address the Decommissioning Obligations then requiring performance. In order to give BOEM Obligee immediate access to the remaining Bond proceeds pursuant to this Paragraph 2.16, the Seller Obligee will provide, in the agreement establishing the escrow or other appropriate account into which Seller Obligee deposits the Bond proceeds, terms that authorize BOEM Obligee, after notifying Seller Obligee of Seller Obligee's failure to timely commence Decommissioning Obligations, to make withdrawals from the account consistent with this Paragraph 2.16.



# Dual Obligee Bond Specific Provisions

- 2.17** Regardless of which Co-Obligee calls the Bond, and notwithstanding anything else to the contrary herein, any and all proceeds attributable to forfeiture, or call, of the Bond must be applied solely and exclusively to extinguish the Decommissioning Obligations, regardless of insolvency, bankruptcy, or default of the Principal, or an assignment by the Principal of all or part of its interests in the Lease, and all operations and activities necessary to be performed to extinguish such Decommissioning Obligations must be timely performed in accordance with the regulations of the Department of the Interior.



# Drafting Considerations

- Flexibility to account for changed circumstances
  - e.g. changes in BSEE Assessments.
- Interplay with BOEM Financial Assurance Requirements, both now and anticipated.
- What works and what doesn't?
- Design Agreements to get the P&A done!



# *Creative Approaches to Offshore A&D Transactions*

## *What Forms of Security and Performance Guarantees Work Best*

Paul J. Goodwine  
Looper Goodwine P.C.

[pgoodwine@loopergoodwine.com](mailto:pgoodwine@loopergoodwine.com)

