

## CLIENT ALERT

### Government Liable for \$99 Million in Breach of Contract Damages Under Indemnification Clause

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On July 18, 2018, the Federal Circuit affirmed the U.S. Court of Federal Claims' decision in *Shell Oil Co., et al.* awarding \$99.5M to Shell and other oil companies for the government's breach of World War II-era contracts for high-octane aviation gasoline production (previously discussed [here](#), and [here](#)).

The case began when the U.S. and California sued the oil companies under CERCLA for costs of cleaning up acid sludge caused by the gasoline production. After being found liable under CERCLA, the companies filed claims against the government at the COFC for reimbursement of their CERCLA costs under the theory that the government had breached the "Taxes" clauses in their contracts, which, they argued, required the government to pay "any" charges related to gasoline production. In a decision which may encourage other contractors to pursue recovery under similar contract provisions such as "hold harmless" clauses in facilities contracts, and indemnification clauses authorized under [Public Law 85-804](#), the Federal Circuit ruled that the COFC properly determined that the government breached the Taxes clause, and affirmed the award of \$99.5M in damages (including nearly \$31 million in interest on the companies' claims).

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