

GARDERE

INDEMNITIES

Samantha Trahan

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AUSTIN

DALLAS

HOUSTON

MEXICO CITY

Practical Points

- Scope of Indemnities
- Choice of Law

Scope of Indemnities

Indemnatee Class

Contractor agrees to indemnify **Operator, its officers, directors and employees**, from and against all claims without limit and without regard to the cause or causes thereof or the negligence or fault (active or passive) of any party or parties including the sole, joint or concurrent negligence of Operator, arising in connection herewith in favor of **Contractor's employees**.

Triggering Class

Scope of Indemnities – Expanded

○ Indemnatee Class

Company

- Parent / Subsidiary / Affiliate
- All Employees

○ Triggering Class

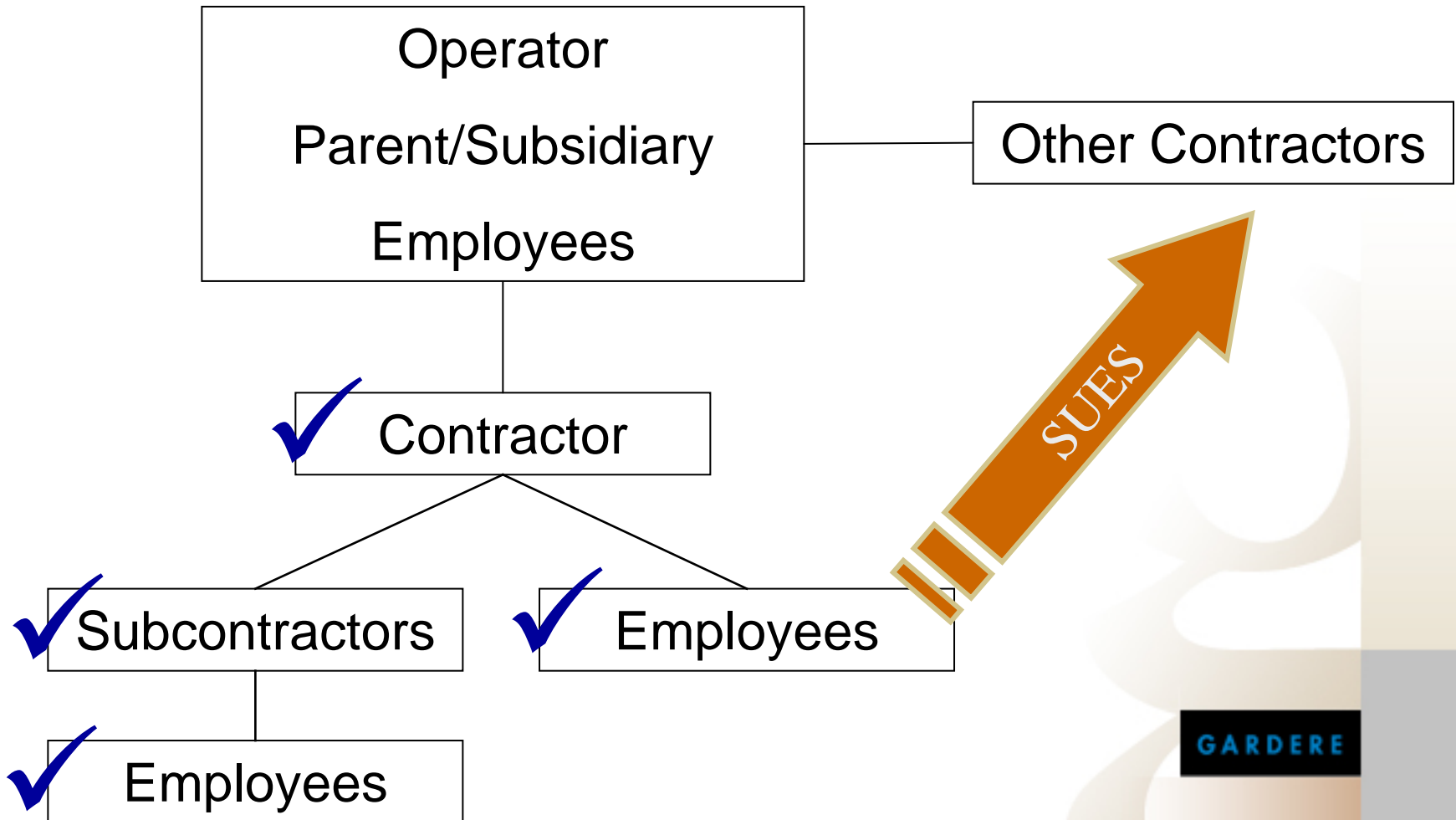
Contractor

- Any Tier Subcontractors
- All Employees

Scope of Indemnities – Expanded

Contractor agrees to indemnify **Operator, its parent, subsidiary and affiliated companies, and its and their officers, directors and employees**, from and against all claims without limit and without regard to the cause or causes thereof or the negligence or fault (active or passive) of any party or parties including the sole, joint or concurrent negligence of Operator, arising in connection herewith in favor of **Contractor's employees, subcontractors of any tier and their employees or invitees.**

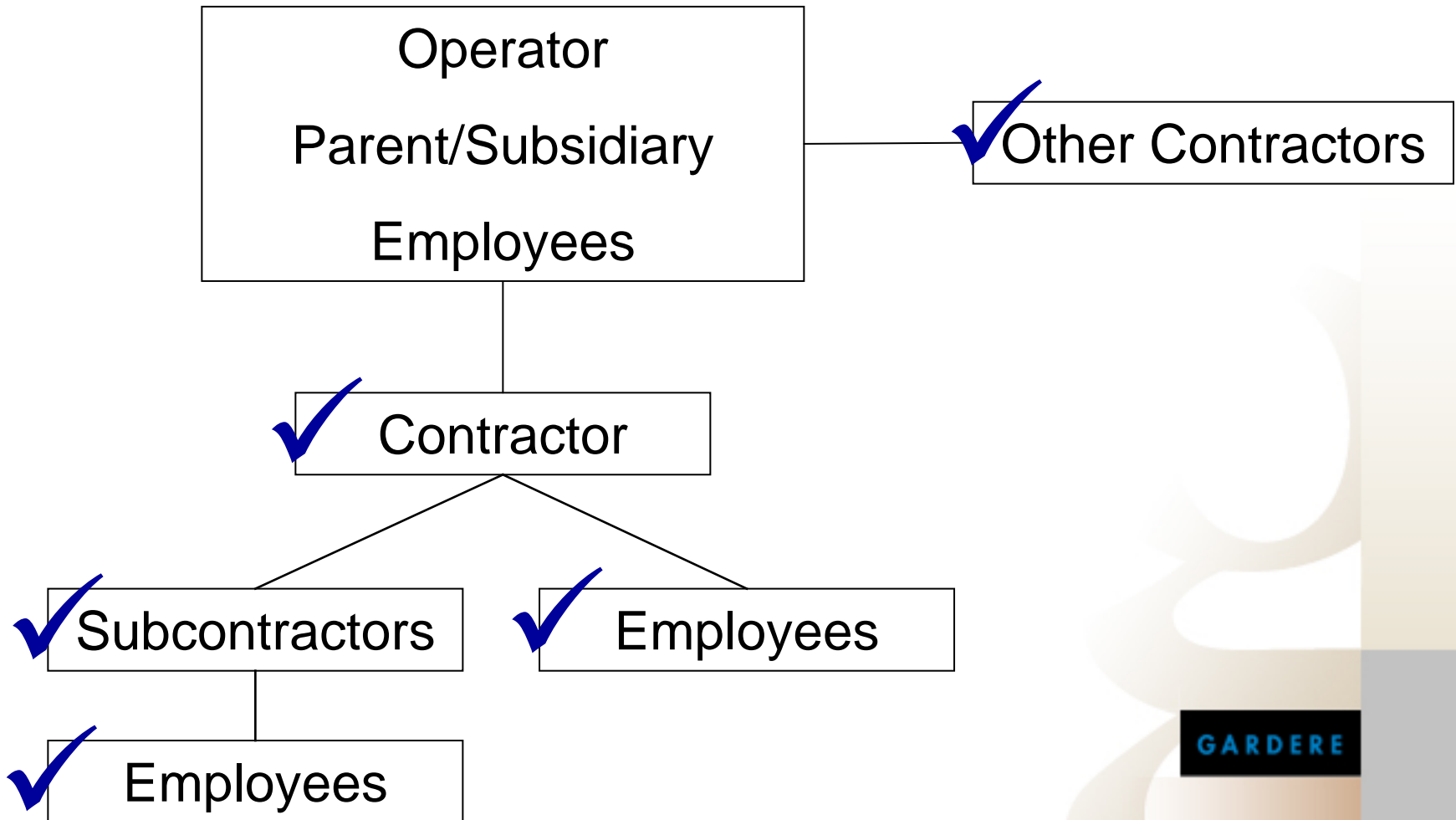
Scope of Indemnities – Expanded



Scope of Indemnities – Expanded

Contractor agrees to indemnify **Operator, its parent, subsidiary and affiliated companies, all of their officers directors, subcontractors of any tier, and its and their employees and invitees**, from and against **all claims** without limit and without regard to the cause or causes thereof or the negligence or fault (active or passive) of any party or parties including the sole, joint or concurrent negligence of Operator, arising in connection herewith in favor of Contractor's employees, subcontractors of any tier and their employees or invitees.

Scope of Indemnities – Expanded



Choice of Law

- Parties can **negotiate** and chose the substantive law of a particular state or country.
- The parties' choice will be upheld unless:
 - the chosen forum lacks a substantial relation to the parties or the transaction; or
 - the law of the chosen forum violates a fundamental public policy of the applicable forum.

Choice of Law

- Factors considered in a choice of law analysis:
 - Domicile of the contracting parties (5th Cir.)
 - Location of the contract's performance (Tex. S. Ct.)
 - Place of indemnity obligation (Tex.App. 14th Dist. majority)

Choice of Law

VOID



VALID

- Louisiana
- New Mexico
- Texas
- Maritime
- Oklahoma

Choice of Law

Oklahoma	Maritime	Texas	Louisiana
Contract Negotiations	Job Site	Principal Office	Contractor's Principal Office
Corporate Domicile	Contract Performance	Indemnity Obligation	
	Insurer's Preference		

Choice of Law

**Anti-Indemnity Acts
(need insurance)**

Oklahoma	Maritime	Texas	Louisiana
Contract Negotiations	Job Site	Principal Office	Contractor's Principal Office
Corporate Domicile	Contract Performance	Indemnity Obligation	
	Insurer's Preference		

1. O.C.S.L.A. (adopts adjacent state)
2. Need a back-up law

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