



Institute for
ENERGY LAW

The Energy Law Advisor

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Industry News

Email [Becky McGee](#) and
[Vickie Adams](#).

Member Announcements

Email [Vickie Adams](#).
Please submit photo with
announcement if possible.

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Editor's Note - As we publish the first 2019 issue of the *Energy Law Advisor*, I want to provide special recognition and express appreciation to the authors of articles contributed to the ELA in 2018:

Brendan Doherty, Geiger, Laborde & Laperouse, L.L.C.; Claire Juneau, Kean Miller LLP; Matti Lemmens and Zachary Seymour, Borden Ladner Gervais LLP; Jeremy A. Mercer, Porter Wright Morris & Arthur LLP; Kenneth J. Witzel, Frost Brown Todd LLC; Joseph Castelli, White & Case LLP; Chris Halgren and Austin Brister, McGinnis Lochridge; Peter Hays, King & Spalding LLP; Jackie E. Hickman, Liskow & Lewis; Edward S. Renwick, Hanna and Morton LLP; Sarah Nealis and Sarah McLean, Shearman & Sterling LLP; Brett A. Miller, Water Asset Management, LLC; Kelly O'Bryan de Mota, Cimmaron Land, Inc.; Laura Robertson, ConocoPhillips and Louie Layrisson, Baker Botts L.L.P. (interviewed for ELA article).

Industry News

The Emergence of Representations and Warranties Insurance in Oil and Gas M&A Transactions

When a buyer purchases all, or substantially all, of the assets of a seller, the buyer will typically obtain some form of security for seller's potential post-closing liabilities. Traditionally, when the seller is a special purpose vehicle or is selling a significant portion

of its assets and a parent guaranty isn't a viable alternative, a buyer and seller agree to deposit a portion of the purchase price in a third-party indemnity escrow account to secure seller's indemnity obligations to the buyer. However, Representations and Warranties (R&W) insurance is an increasingly popular alternative to the traditional indemnity holdback structure. Although R&W insurance has been available for decades, its usage in the oil and gas industry has grown in recent years. [Read more.](#)

By Sarah McLean and Sarah Nealis, Shearman & Sterling LLP

2018 M&A Infrastructure Activity in the Permian Basin

Oil production in the Permian Basin has soared in 2018, with an annual output of 3.3 million barrels/day (MMBD). Production shows no signs of slowing, with an estimated 2019 output of 3.9 MMBD, with some estimates for 2019 as high as 4.6 MMBD. Technological and operational improvements have kept production economic in the Permian Basin, even with the fluctuations in oil prices seen in 2018.

But increased production has led to other problems. Infrastructure development in the Permian Basin – pipelines, water disposal, power and related services – lags behind oil production and has created a bottleneck for Permian producers to get their product to market. Recent M&A activity in the Permian Basin highlights the challenges and opportunities facing participants in Permian infrastructure acquisitions. [Read more.](#)

By Joseph Castelli, White & Case LLP

Fifth Circuit Sets Dangerous Precedent for Oil-and-Gas Class Actions

In *Seeligson v. Devon Energy Production Co. LP*, the Fifth Circuit reversed a Texas federal court's decision to certify a class of mineral lessors who had sued Devon Energy for the alleged underpayment of royalties. While at first blush this may sound like a victory for the industry, precisely the opposite is true of this appellate opinion that is by and large flying under the radar—despite its unnerving potential to open the floodgates to a new wave of royalty class action litigation in the oil patch. [Read more.](#)

By Thomas G. Ciarlone, Jr., Kane Russell Coleman Logan PC

Midstream Oil and Gas M&A Deal Point Study

In this article, corporate attorney Greg Krafka identifies "what's market" concerning certain deal terms in midstream oil and gas acquisition agreements (e.g., certain financial provisions, representations and warranties, indemnification terms, and dispute resolution provisions). Specifically, this article provides

statistical information concerning these deal terms in 56 publicly-available acquisition agreements involving the acquisition of midstream oil and gas assets or companies. While the findings of this study concerning the selected deal terms were generally broadly consistent with the findings of the *Private Target Mergers & Acquisitions Deal Points Study (Including Transactions from 2016 and H1 2017)*, a project of the M&A Market Trends Subcommittee of the American Bar Association's Business Law Section, this article discusses some noteworthy differences. [Read more.](#)

By Greg Krafka, Winstead PC

Citizen-Suit Theory Tested in Western District of Louisiana

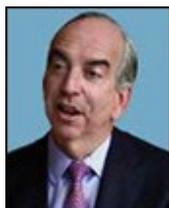
A federal judge in Monroe, Louisiana recently held that a "legacy" lawsuit for alleged contamination of oil and gas property could proceed under a citizen-suit theory despite defendants' motions to dismiss because plaintiffs characterized defendants' operations as an "ongoing" violation of various environmental conservation statutes and regulations. [Read more.](#)

By Colleen C. Jarrott, Baker Donelson

IEL News

70th Annual Oil & Gas Law Conference

The 70th edition of the Institute for Energy Law's Annual Oil & Gas Law Conference will take place in Houston on **February 21-22**. This outstanding program brings together legal leaders in the oil and gas industry for excellent educational programming and multiple social and networking opportunities with a diverse audience. Building off the theme of **Energy in Transition**, Co-chairs Kimberly Phillips (Shell Oil Company) and Mark R. Robeck have developed a unique and exceptional edition of the country's longest-running oil and gas law CLE conference. This year's conference will feature a session with the last three general counsels of ExxonMobil, a new module on transformational technologies, a session on Exporting North America's Shale Revolution, and much more! To view the entire schedule, [click here.](#)



John Hess (Hess Corporation) will be honored with the John Rogers Award the evening of February 21 at the Houston Petroleum Club as part of the [70th Annual Oil & Gas Law Conference](#). The John Rogers Award was established in 1969 in honor of John Rogers of Tulsa, Oklahoma, and is presented annually during the Oil & Gas Law Conference to a person associated with the petroleum industry in recognition of extraordinary

professional and civic achievement.

David F. Asmus (Sidley Austin LLP) has been selected to present the Deans of Oil & Gas Lecture at the Annual Oil and Gas Law Conference. For his Deans Lecture, Mr. Asmus will speak on Ten Cases that Surprised the Oil and Gas Industry. He will be reviewing his favorite Texas cases (excluding cases about oil and gas leases) where industry practice and the law as found by the courts did not align.



Interested in getting more involved in our Practice Committees?

Below are a few events hosted by our Practice Committees. We will continue to update members regarding new events as they arise.

Want to make sure you're on a particular committee? Email iel@cailaw.org and we will ensure you're on that committee's roster.

- **Litigation & Dispute Resolution** – The Litigation & Dispute Resolution Committee recently helped put together a new IEL recorded webinar on [Oil and Gas Litigation: Persuading Millennials \(and Other Cohorts\) in Light of Fake News & Alt Facts](#). This webinar is free for IEL members, IEL Supporting or Sustaining Member Employees, Full-time Law Students, and is only \$25 for non-members. [Register here](#).
- **Oil & Gas** - The Oil & Gas Committee will have their next quarterly call on **March 14** at 11:00 am Central. More information regarding the call in details will be sent to committee members closer to the date of the call.

Is your CLE deadline quickly approaching and you're running a little short on time? Check out our new on-demand webinar [Predevelopment Issues in the Renewable Space](#)! This 60-minute webinar is free for IEL Members, IEL Supporting or Sustaining Member Employees, and Full-time students, and only \$25 for Non-Members. Texas MCLE Credit is available.

If you have an article or a member news item for a future issue of this publication, or any questions regarding IEL's publications, please contact IEL's Associate Director, [Vickie Adams](#).

Did you know? IEL is on [Twitter](#), [LinkedIn](#) and [Facebook](#) posting pictures and program updates. Connect with us today!

Mark Robeck joined the Department of Energy as Deputy General Counsel for Energy Policy.



Eversheds Sutherland recently welcomed **Michael B. Bennett** to the Litigation Practice Group as Partner in the Houston office. Michael's practice focuses on complex business disputes, primarily counseling clients in the oil and gas, petrochemical and pharmaceutical industries. Before joining Eversheds Sutherland, Michael was a partner at Baker Botts.

At year-end 2018, **Mark D. Christiansen** joined the energy and environmental law and litigation practice group at the Oklahoma City law firm of Edinger Leonard & Blakley PLLC.

Please join us in welcoming IEL's newest members!

Supporting:

- **Porter Wright Morris & Arthur LLP**, Pittsburgh, PA, with Christopher Baronzzi, Jeremy Mercer, Brett Thornton, Devan Flahive, and Ryan Steele as Advisory Board Representatives.
- **Cabot Oil & Gas Corporation**, Houston, TX, with Kevin Cunningham and Cole DeLancey as Advisory Board Representatives.

Sponsoring:

- **Kazmarek Mowrey Cloud Laseter LLP**, Pittsburgh, PA, with Paul Stockman as the Advisory Board Representative.
- **Chris Schwartz**, Nathan Associates, Inc., Houston, TX

Associate:

- **Bethany Salvatore**, Cozen O'Connor, Pittsburgh, PA
- **Lambert Laperouse**, Gieger, Laborde & Laperouse, L.L.C., Houston, TX
- **Victoria Lazar**, General Electric Company, Houston, TX
- **David E. Sharp**, Law Offices of David E. Sharp P.L.L.C., Houston, TX

Young Energy Professional Members:

- **Michael Blankenship**, Locke Lord LLP, Houston, TX
- **Anastasiia Dulaska**, Akin Gump Strauss Hauer & Feld LLP, Geneva, Switzerland

- **Jackie Kelso**, Concho Resources Inc., Houston, TX
- **Andrew D. Martin**, Davidson Summer APLC, Shreveport, LA
- **Wolfgang McGavran**, McGuireWoods LLP, Washington, DC
- **Gregory Michaels**, Dickie, McCamey & Chilcote, P.C., Pittsburgh, PA
- **Jarrett Rinehart**, JJR Land Services, Pittsburgh, PA
- **David Schwan**, Concho Resources Inc., Houston, TX
- **Daniel Stanton**, Kean Miller LLP, New Orleans, LA
- **Ekene Donald Ugwu**, Lawknights Solicitors, Lagos, Nigeria

If you know anyone with questions about joining IEL as a member, please refer them to IEL's Associate Director, Vickie Adams (vadams@cailaw.org).

Calendar of Events

[70th Annual Oil & Gas Law Conference](#)

Houston, TX
Feb 21 - 22,
2019

[3rd National Young Energy Professionals' Law Conference](#)

San Antonio,
TX
Apr 10 - 12,
2019

[6th Mergers & Acquisitions in Energy Conference](#)

Houston, TX
May 21, 2019

[Offshore Energy Law Conference](#)

Houston, TX
May 22, 2019

[19th Institute for Natural Resources Law Teachers](#)

Houston, TX
May 29 - 31,
2019

[10th Law of Shales Plays Conference](#)

Pittsburgh, PA
Sep 4 - 5, 2019



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