



# Changes and Challenges in the Oil & Gas Industry

**2019 ENERGY FORUM PERSPECTIVES AND INSIGHTS**

BOYAR )))) MILLER  
ATTORNEYS AT LAW

# Welcome!

One of the speakers at this year's Energy Forum aptly stated that energy will be around forever in the form of hydrocarbons, or new varieties that will evolve decades from now.

The industry impacts all of us individually, as well as Houston as the world's energy capital. It is a constantly evolving dynamic industry, and we appreciate hearing about its changes and challenges from our panel of executives in oil and gas services, production, and finance. They shared the industry's current state of capital discipline, funding shifts, and commoditization as oil prices recover and a slow, steady rebound continues.

At BoyarMiller, we work to stay informed about industry trends and we share our knowledge and learnings with others. That is the purpose of this eBook and our annual forums—to deliver information from experts that may help us make better strategic business decisions. We hope you enjoy reading this eBook and share it with those who may find this timely information helpful.

Our extensive team of energy practice leaders assists clients who operate in this vital industry advance their business goals, attain new possibilities, and solve complex issues. Contact us to learn more about BoyarMiller, and how we work to achieve extraordinary outcomes for our energy clients.

Thank you to Laura Schilling of Pumpco Services, James P. Baker of Piper Jaffray & Co., and Matt McCarroll of Fieldwood Energy, LLC for sharing their insights and perspectives about the state of the oil and gas industry.



My best,

A handwritten signature in black ink that reads "Chris Hanslik".

**CHRIS HANSLIK**  
*Firm Chairman*

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# Breakfast Forum At-A-Glance



“  
Fragmentation  
in OFS is the  
highest we’ve  
ever seen.  
**LAURA SCHILLING**”



“  
We want to be sure our infrastructure  
lasts as long as our reserves in the  
Gulf of Mexico.  
**MATT McCARROLL**”



“  
The business model has  
changed for upstream  
private equity groups.  
**JAMES P. BAKER**”



“  
There is fantastic technology across  
the industry and it’s really exciting.  
**LAURA SCHILLING**”

“  
The biggest risk we can’t  
mitigate or control is a  
hurricane in the Gulf.  
**MATT McCARROLL**”



“  
The focus now is on capital  
discipline and financial metrics;  
it’s a new mindset.  
**JAMES P. BAKER**”





# Expert Insights: Oilfield Services

“It’s an interesting time in oilfield services right now.”

**LAURA SCHILLING**  
*President, Pumpco Services*



Laura leads Pumpco Services, a Superior Energy Services company that delivers hydraulic fracturing services across the southern U.S. in key basins including the Permian and Eagle Ford.

- The former playbook we had in OFS is when oil prices went up, rigs went to work, capital was invested, and we kept going until the cycle came down again. Now there is a call for capital discipline.
- This recovery has been different for OFS companies because the competitor mix has shifted. There used to be the big three service companies and then everybody else. Now you have a plethora of companies and operators are willing to use them.
- Because of fragmentation, our company is putting less capital in the U.S. this year and more in international and the Gulf of Mexico. We have a lot of customers in the Gulf with fantastic returns; there’s no reason not to invest there.
- The upturn in OFS hasn’t lasted that long; we look at three- to five-year cycles. Right now, we still have OFS companies with a lot of debt and they have to get their balance sheets back in order.
- Investors want capital discipline. The question is how many quarters is it going to take for them to believe and reward management teams so there will be some inertia and movement?
- There’s an adage that ‘slow is fast and fast is slow’ that applies to the operational efficiency at a frac site. Our customers want our ideas on how we can achieve efficiency safely – whether that is with technology or different processes. Execution matters.



# Expert Insights: Funding Shifts

“The energy industry has an opportunity for everyone.”

**JAMES P. BAKER**

*Managing Director, Global Co-Head of Investment Banking and Capital Markets, Piper Jaffray & Co.*



Prior to assuming his current role, Baker served as co-head of energy investment banking for Simmons Energy | A Division of Piper Jaffray<sup>SM</sup>. He joined Simmons in 2001 to help grow the firm’s midstream/downstream platform. He was later promoted to lead the midstream/downstream group and manage the upstream group, as well as serve on the Simmons’ board and management committee.

- We are still seeing growth in the midstream sector, not just for typical commodities but also water. The disposal logistics around water, which is a bi-product of hydrocarbon production, is a growth area right now.
- Private equity funds that are flush with capital are looking at the midstream companies with cash flow and growth profiles and stepping in now to bridge the gap in the market. When the market returns, they will flip them to strategics or take them public.
- Master Limited Partnerships (MLPs) are fixing their balance sheets and restructuring with some moving toward C Corps.
- I think many agree that consolidation needs to happen in the industry, but the catalysts are difficult.
- Because they are fully integrated, the majors right now are not beholden to the concept of operating upstream portfolio within cash flow; they can make it up on the downstream side.
- The biggest change in the midstream space is that 10 years ago the vast majority of buyers were master limited partnerships or MLPs. Since 2017, we have seen about \$50 billion worth of mergers and acquisitions in midstream; approximately \$40 billion of it has been financial buyers with \$10 billion representing strategic buyers.



# Expert Insights: Production

“If I knew where oil prices were headed, I wouldn’t be producing it, I’d be trading it.”

**MATT McCARROLL**  
Chairman and CEO, Fieldwood Energy LLC



Matt founded Fieldwood Energy in 2013 and it is currently the fifth-largest producer in the Gulf of Mexico and one of the largest privately owned exploration and production companies in the U.S.

- People need to realize that the price of oil we see reported is good for one month. The price a year or two years out is unknown, so you mitigate risk by hedging and locking in prices for planning.
- We view ourselves as a consolidator of shallow water operations in the Gulf of Mexico and are moving into deepwater.
- I think of us as farmers. We have a crop, that’s oil and gas, the weather impacts our business, someone is going to buy our crop, and we ultimately sell it at a price high enough to make money.
- It’s nice to have the government back as a partner and not our adversary. We still have a lot of pressure, and there are 25 to 30 people in our company that are devoted to regulatory matters to assure our compliance.
- There is a lot of regulatory oversight because of concern of corrosion issues and the age of the infrastructure in the Gulf of Mexico—and how much longer it can safely and effectively produce. We want to be sure our infrastructure lasts as long as our reserves. But the solution is new reserves to justify building new infrastructure or improving the existing one.
- Unfortunately, as our industry continues to consolidate, we are eliminating jobs. You don’t need two accounting departments or two safety departments. It’s a real negative consequence of consolidation.



# Expert Insights: Attracting and Retaining Talent



Globally across the industry, finding talent has always been a challenge.



Energy will be around in some form forever. The technology that is involved today is on par with AI. To have a drillship five miles above the ocean floor, drilling 20,000 feet below the ocean floor, using a joy stick is incredible. It's not something you bootstrap in your garage.



There has always been a field workforce that migrates from basin to basin. But on the engineering side, we compete for talent with technology companies from all industries.



Universities like Texas A&M are letting students cross-pollinate departments so a petroleum engineer student can take business courses. The result will be a well-educated engineer who can communicate.



The millennial generation wants to be part of something that makes a difference; they want an alternative lifestyle and that may be independent contracting. They don't feel a need to work for a Fortune 500 company. Our sector faces that challenge with the next generation and its lifestyle choices—we must take it seriously.



Do what you love and figure out how to make money with it, whether that is computer science, engineering, or finance. There are spots for all those disciplines in our industry.

# Attorney Insights

## Is It Really Knock-for-Knock?

**SHAY JOHANSON**  
Of Counsel, Business Group

In a recent conversation with a prominent oilfield service investment banker, I brought up what I see as a growing trend among exploration and production companies (Operators) to push more liability onto oilfield service companies whose services reach below the earth's surface during drilling and completion operations (Service Companies). When I pointed out the latent risks associated with owning or acquiring Service Companies because of their potential exposure to significant, yet largely unforeseen indemnification obligations, he replied, "It's all knock-for-knock, isn't it?" The answer was and is—it used to be, but not so much anymore.

When a Service Company goes on location and performs services, a simple mistake could result in millions of dollars of damages or even the loss of life. If a Service Company is performing services under the assumption that knock-for-knock indemnity applies, they could be wrongly thinking that those potential liabilities are either being assumed by the Operator or covered by the Service Company's own insurance policies, when in fact, neither may be the case.

The traditional oilfield services contractual indemnity model is referred to as "knock-for-knock."



Knock-for-knock refers to an indemnity provision in a contract where each party agrees to indemnify and hold harmless the other party from any and all claims, damages, losses, and liabilities in respect to its own properties and employees (including death, illness and injury), regardless of fault, including the fault of the indemnified party.

This indemnity model works fairly well in the oil and gas industry since the Operator and the Service Company are naturally in the best position to ensure against and mitigate any risk of "loss" relating to their own assets, properties, and people. However, over the last decade or so Operators have been steadily chiseling away at the knock-for-knock indemnity model in order to allocate to Service Companies a larger share of the risk for pollution, well damage and damage to the hole, blowouts/wild well events (including control and remediation costs), damage to an aquifer or the formation itself, including the loss of oil or gas therefrom, (collectively, "Well Damages").

Some Operators use a direct approach to allocate more responsibility for Well Damages onto Service Companies. They employ contractual language that specifically carves out various types of Well Damages from the general knock-for-knock indemnity provision to the extent that such Well Damages arise or result from the simple negligence or gross negligence of the Service Company.

In the alternative, this liability may be reallocated to a Service Company through a "less is more" approach. For example, a service agreement between an Operator and a Service Company that contains a standard knock-for-knock indemnity may also contain a seemingly innocuous exception for any "losses" that are caused by or result from the "gross negligence" of the Service Company. While this

sort of provision may not unequivocally state that “losses” include Well Damages, by omission, the net effect is the same; the Service Company will be liable by contract to indemnify and defend the Operator from and against Well Damages that arise or result in whole or in part from that Service Company’s gross negligence.

At this point, you are probably asking yourself, “How does this impact me?” The answer is it probably doesn’t unless you operate, own, or are planning to acquire a Service Company. If that is the case, it could affect you in ways that you may not fully appreciate. In essence, you may be unknowingly “betting the Company” every time your people step on location. One reason is that your Service Company’s insurance policies may not actually provide coverage for the Well Damages that it is assuming responsibility for under its service agreements. Well Damages may not be a covered claim for a variety

of reasons. Some commercial general liability and excess (CGL/Excess) liability policies exclude certain types of Well Damages in the absence of a policy rider. In addition, typical CGL/Excess liability policies exclude coverage for losses that arise from services performed by the insured, if the insured would not otherwise be liable for such losses in the absence of a contract (e.g. if the insured would not be liable for the Well Damages under common law principles). Courts in some jurisdictions have gone so far as to rule that the CGL/Excess liability policies do not insure against claims if the claims arise out of work performed by the insured, pursuant to a contract given the presence of breach of contract exclusions incorporated into the policies by endorsement. This is problematic for Service Companies since a valid Well Damage claim brought against a Service Company will almost certainly arise from the work performed by the insured pursuant to a contract.

This is even more troublesome (in light of standard form exclusions j(5) and j(6)) for wellbore or reservoir damage (and any associated loss of oil or gas). Moreover, and perhaps most importantly, standard insurance policies expressly exclude, via endorsement, coverage for damages that arise from the gross negligence or willful misconduct of the insured.



In essence, if a Service Company enters into a service agreement that allocates responsibility, either overtly or by omission, onto that Service Company for Well Damages arising from its “gross negligence,” that potential liability is uninsured.

In addition, as difficult as it may be for a Service Company to trigger coverage under its policies for Well Damages, even if coverage is triggered, the total liabilities associated with any one (or a combination) of the different types of Well Damages could very easily exceed the CGL/Excess liability policy limits.

### What can a Service Company do to adequately protect its interests?

First, ensure that any service agreement to be entered into between your Service Company and an Operator has been thoroughly reviewed by an attorney who has significant experience working with Service Companies (preferably in the same or a similar service line as the Service Company) and has an in-depth understanding of what your Service Company, its equipment, and its people actually do on location (and how that interplays with the Operator’s role and operations). In addition, that attorney should not only understand the nuances associated with indemnity provisions, but should also have a firm understanding of all aspects of liability insurance (including, standard endorsements and other exclusions from coverage, as well as, the policy riders available), how the insurance policies and the indemnity provisions will interact and, ultimately, how that will affect the Service Company’s obligations/liabilities under a service agreement. In essence, your attorney’s role is to assess and inform you of the risks, help mitigate your exposure to those risks and otherwise advise you so that you are able to make a fully informed business decision based on your risk tolerance.

Second, you may be “forced” to accept a service contract that exposes your Service Company to Well Damages, which is likely if you want to work in this competitive market. In the absence of spending a significant chunk of your anticipated profits on insurance policy riders, it would be advisable to either (a) limit your liability to the insurance proceeds actually paid out under your policies and/or (b) insert a provision into the service agreement that limits your maximum liability for different types of Well Damages, regardless of the cause. If your Service Company is not insured for certain Well Damages, it should contract for a liability limit that is affordable in light of the proforma P&L you have modeled for the service agreement, be it \$100,000 or \$1,000,000, and look upon that amount as an insurance deductible. If you are insured for Well Damages, contractually limit the liability for Well Damages to a maximum amount that is at or below your CGL/Excess liability policy limits, but in any event, does not exceed the actual insurance proceeds paid out under your insurance policies.

If you are planning to acquire a Service Company, make sure your attorney is not only an excellent mergers and acquisitions attorney...

The attorney must also possess a firm understanding of the business/operational aspects of the target Service Company, the target Service Company’s role at the well site, and the pitfalls associated with oilfield service agreements and the indemnity provisions. Be sure that you properly understand any inherent risks associated with your investment in the target Service Company and allocate those risks to the seller of the target Service Company to the greatest extent possible.



# Our Energy Experience Runs Deep



Our representation of companies in the energy sector includes mergers and acquisitions, financings, master service agreements, employment agreements, joint ventures, and other transactions.

## BUSINESS NETWORK

Shareholder Gus Bourgeois is the founder of the Texas Global Business Network, a networking group of seasoned professionals who have experience assisting international enterprises in doing business in the U.S.



We represent energy companies in commercial, trade secret, environmental, and construction disputes, and in a broad range of labor and employment issues and disputes.



## BEYOND BORDERS

In addition to representing U.S.-based clients, we often represent companies based in the U.K. and Norway in their U.S. transactions.



Shay Johanson, Of Counsel in our Business Group, has worked in-house for oil and gas companies and has deep industry knowledge to provide value-driven solutions to complex problems and disputes.



# Energy Practice Leaders



**CHRIS HANSLIK**  
*Firm Chairman*

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Represents companies in all aspects of the energy sector, both domestically and internationally, in disputes ranging from breach of contract and fraud to misappropriation of trade secrets and employment-related disputes. Has secured favorable results in both state and federal courts, as well as international arbitration proceedings for energy clients.



**BILL BOYAR**  
*Founding Shareholder, Business Group*

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Represents the various parties involved in the acquisition, disposition, capitalization and financing of national and international businesses. Served as lead counsel for numerous complex, multi-party acquisitions and project financings with significant experience in corporate finance, mergers and acquisitions, private equity and structure finance.



**STEVE KESTEN**  
*Chair, Business Group*

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Represents multiple international energy and energy services clients with outbound expansion (i.e., U.S. companies expanding internationally) and inbound expansion (international companies expanding to the U.S.), including start-up expansion or expansion by acquisition, as well as in connection with financing and merger and divestiture transactions.



**GARY MILLER**

*Founding Shareholder, Business Group*

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Represents numerous domestic and offshore-based companies in connection with acquisitions and divestitures, financings, joint ventures and general corporate matters in the U.S.



**GUS BOURGEOIS**

*Shareholder, Business Group*

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Represents clients doing business domestically and internationally in connection with mergers and acquisitions, finance and multi-jurisdictional transactions, including negotiation of contracts for sales of goods and services (including master service agreements), technology licensing, joint venture agreements, and employment agreements, with significant experience in assisting foreign businesses in establishing and growing their U.S. operations.



**SHAY JOHANSON**

*Of Counsel, Business Group*

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Has acted as General Counsel for multiple oilfield services companies. Represents oilfield services companies in transactions including mergers and acquisitions, dispositions, joint ventures, private securities offerings, corporate restructuring, venture capital, private equity financings, corporate governance matters, and general contracts.



**ANDREW PEARCE**

*Shareholder, Litigation Group*

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Represents both individuals and corporations in all types of commercial and business litigation—including the oil and gas and chemical industries—for conflicts involving employment disputes, trade secrets and confidential information, breach of contract and more.



**BLAKE ROYAL**  
*Shareholder, Business Group*

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Blake's practice includes acquisitions and dispositions of equity and assets of both real estate and operating businesses, including entity and capital formation, such as private placements in domestic and international jurisdictions; recapitalization transactions with venture capital and private equity funds; and general contractual drafting and negotiation.



**MATTHEW S. VEECH**  
*Shareholder, Litigation Group*

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Represents clients in a variety of employment and business-related disputes, including matters relating to enforcement of non-compete and non-solicitation agreements, misappropriation of trade secrets and proprietary information, breach of fiduciary duties and breach of contract and related business torts.



**PHILIP A. DUNLAP**  
*Shareholder, Business Group*

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Represents clients for corporate and private securities transactions as well as serving as outside general counsel in a variety of matters, including mergers and acquisitions, financing, employment agreements and raising capital through private offerings.