



Institute for
ENERGY LAW



Mergers & Acquisitions / Acquisitions & Disposals Conference



Mergers & Acquisitions / Acquisitions & Disposals Conference

May 28-29, 2014

**Hilton Post Oak Hotel
Houston, Texas**

Register Now! cailaw.org/iel

New Program - Topics Include

- | preparing for a sale
- | due diligence fundamentals
- | the purchase and sale agreement
- | fiduciary duty issues
- | preferential rights
- | tax considerations

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IEL is an Institute of
**THE CENTER FOR AMERICAN
AND INTERNATIONAL LAW**

Conference Co-Chairs

Harry W. Sullivan, Jr.
Senior Counsel
ConocoPhillips
Houston, Texas

Debra Villarreal
Thompson & Knight LLP
Dallas, Texas

About The Center for American and International Law (CAIL)

The Center for American and International Law (CAIL) is a nonprofit institution dedicated to improving the quality of justice through continuing education to lawyers and law enforcement officials in the United States and throughout the world.

Founded in 1947, CAIL was a pioneer back in a time when the notion of continuing formal education beyond law school was a relatively new idea. Today, tens of thousands of lawyers and law enforcement officers from all 50 states and 130 countries have participated in CAIL programs.

The Institute for Energy Law is one of the divisions of CAIL.



**THE CENTER FOR AMERICAN
AND INTERNATIONAL LAW**

7:30 REGISTRATION AND CONTINENTAL BREAKFAST

8:45 WELCOME, OVERVIEW AND INTRODUCTIONS

- **Harry W. Sullivan, Jr.**, Senior Counsel, ConocoPhillips, Houston, Texas
 - **Debra Villarreal**, Thompson & Knight LLP, Dallas, Texas
-

9:00 PREPARING FOR A SALE

The deal does not begin with the purchase and sale agreement. Our speaker will discuss the important preparation required long before the contractual process begins.

- **Timothy Bonstaff**, Evercore, Houston, Texas
 - **Doug Rogers**, Evercore, Houston, Texas
-

9:45 PRELIMINARY AGREEMENTS AND PURCHASE AGREEMENT STRUCTURE

This session will discuss letters of intent, confidentiality agreements and other preliminary agreements and will focus on certain critical provisions. The speakers will also discuss key structural aspects of purchase and sale agreements, including key differences between asset and stock purchase agreements, the importance of properly delineating purchased and excluded assets (as well as assumed and retained liabilities) and traps for the unwary. Finally, the purchase agreement discussion will also cover various purchase price mechanics, including working capital adjustments and earn outs.

- **Cliff Vrielink**, Sidley Austin LLC, Houston, Texas
 - **Anna Ha**, Sidley Austin LLC, Houston, Texas
-

10:45 BREAK

11:00 CONTINUED PURCHASE AGREEMENT MECHANICS

This session will address various additional mechanics of purchase and sale agreements including representations and warranties, pre-closing obligations, closing conditions, the survival of representations and warranties, the indemnification process, termination, and waivers.

- **Daniel L. Mark**, Norton Rose Fulbright, Houston, Texas
-

12:00 HOSTED LUNCHEON

ETHICAL CONSIDERATIONS IN PRO BONO TRANSACTIONS

- **Ellyn H. Josef**, Vinson & Elkins LLP, Houston, Texas

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MAYER • BROWN

1:30 DUE DILIGENCE FUNDAMENTALS FOR ACQUIRING AN OIL & GAS COMPANY OR PROJECT

This presentation will address:

- | the process of legal due diligence and how it can reveal new information that affects the valuation of a target
- | key areas of concern for a legal due diligence team
- | how due diligence impacts the definitive acquisition agreement, in terms of negotiations over representations, warranties and indemnities.

— **Denis A. “Archie” Fallon**, King & Spalding LLP, Houston, Texas

2:15 ACCOUNTING DUE DILIGENCE

There’s more to due diligence than just the legal side. In fact, many deals will be equally, or more, dependent on successful financial due diligence. Our speakers will outline the process and considerations for the financial experts assisting with the transaction.

- **Jeff Compton**, Compton & Wendler, Houston, Texas
- **Joshua L. Fuchs**, Jones Day, Houston, Texas

3:00 BREAK

3:15 TRANSITION AGREEMENTS

This session will examine the various issues involved in transitioning operations from a seller to a buyer, including various provisions that can be included in a transition agreement, such as services covered, standards of performance, liabilities and indemnities, costs, use of IP, use of name and logos, and timing. The speaker will approach the topic from the different perspectives of the seller and the buyer.

- **Harry W. Sullivan, Jr.**, Senior Counsel, ConocoPhillips, Houston, Texas

4:15 THE ETHICS OF NEGOTIATIONS

Facts, opinions, puffing, misrepresentations and fibbing...

- **Thomas H. Watkins**, Husch Blackwell LLP, Austin, Texas

5:00 NETWORKING RECEPTION

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THURSDAY, MAY 29

8:55 WELCOMING REMARKS

Conference Co-Chairs

9:00 INDEMNITY AGREEMENTS IN MERGERS AND ACQUISITIONS

Drafting effective and enforceable indemnity agreements in mergers and acquisitions can be critical. The speakers will review what types of indemnity agreements should be used in particular contexts, and whether and how to use “regardless of fault” indemnity provisions. Negotiating baskets, deductibles, caps, and claims procedures will also be discussed. In addition, addressing and securing obligations to perform P&A and decommissioning costs will be covered.

- **Marilyn C. Maloney**, Liskow & Lewis, Houston, Texas
- **William W. Pugh**, Liskow & Lewis, Houston, Texas

10:00 PREFERENTIAL RIGHTS TO PURCHASE

Pref rights/rights of first refusal are a component of virtually every oil and gas deal and can dramatically change the value of an acquisition. Mr. Sergesketter will discuss the basics of pref rights, how they impact deals, and drafting tips to avoid pitfalls, and then will walk through a pref rights case study that puts pref rights theory into real-world practice.

- **Robert J. Sergesketter**, Assistant General Counsel, Fieldwood Energy LLC, Houston, Texas

11:00 BREAK

11:15 TAX CONSIDERATIONS IN ACQUISITIONS AND DISPOSITIONS OF OIL AND GAS ASSETS

There are several tax issues unique to acquisitions and dispositions of oil and gas assets, including issues unique to upstream assets and midstream assets. We will address some of the key tax issues in structuring an acquisition or disposition of oil and gas assets, as well as discuss the key considerations in negotiating and drafting the tax provisions of an acquisition agreement. Topics will include pre-sale tax planning for the retention of overriding royalty interests, transactions involving tax partnerships, choice of acquisition entity, and tax due diligence matters.

- **Mary A. McNulty**, Thompson & Knight LLP, Dallas, Texas
- **Brandon L. Bloom**, Thompson & Knight LLP, Dallas, Texas

12:00 HOSTED LUNCHEON

- **Sarah Terry**, Senior Principal Environmental Consultant, Exploration & Business Development, ConocoPhillips, Houston, Texas

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1:30 CFIUS: THE INCREASING IMPORTANCE OF NATIONAL SECURITY REVIEW FOR ENERGY INDUSTRY M&A

Once hardly even a consideration, the Committee on Foreign Investment in the United States is an increasingly important factor in transnational deals involving U.S. assets and companies. Our speaker will consider when CFIUS notification should be made and review the subsequent process.

- **Stephen Paul Mahinka**, Morgan, Lewis & Bockius LLP, Washington, D.C.

2:00 A LITIGATOR'S VIEW OF A PSA

Transactional lawyers spend many happy hours negotiating the PSA with other transactional lawyers, but the rubber hits the road when something goes wrong weeks, months or even years later, and the transactional lawyers' work product is picked over by litigators. What do litigators think of their colleagues in these moments? What can transactional lawyers learn from litigators before they conclude negotiations?

- **Samuel E. Masur**, Gordon Arata McCollam Duplantis & Eagan LLC, Lafayette, Louisiana

2:45 BREAK

3:00 KEY FIDUCIARY DUTY ISSUES IN SPECIFIC M&A SCENARIOS

The presence of specific deal terms or fact patterns in M&A transactions can result in a complex and challenging landscape in which boards of directors must fulfill their fiduciary duties, and their lawyers must properly advise them. This session will examine a few specific fact patterns that bring to light key fiduciary duty issues for directors and their counsel, both in the private and public M&A context. The focus will be on identifying the key fact patterns that can complicate the performance of fiduciary duties, and how lawyers can most effectively guide boards of directors successfully through such transactions.

- **Omar Samji**, Jones Day, Houston, Texas

3:45 IP IN A SALE

A company's intellectual property, and in particular its rights to the intellectual property of others, may be affected by the sale of the company or some of its assets. What do you need to look out for, and how are IP rights best dealt with?

- **Brian Cowan**, Bradley, Murchison, Kelly & Shea LLC, Shreveport, Louisiana

4:30 PAYING FOR THE COMPANY'S NEXT ACQUISITION

Purchase prices come in many forms. This discussion will provide an overview of the principal considerations in financing an acquisition and the variations of the related agreements necessary to show up at closing with the money.

- **Christine LaFollette**, Akin Gump Strauss Hauer & Feld LLP, Houston, Texas

5:15 ADJOURN

REGISTRATION

Mergers & Acquisitions / Acquisitions & Disposals Conference

May 28-29, 2014

Hilton Post Oak Hotel • Houston, Texas

Registration includes the Conference, course materials on USB and online, continental breakfast, two luncheons and the networking reception.

Check applicable box:	Received by 5/16/14	Received after 5/16/14
Regular registration fee	<input type="checkbox"/> \$745	<input type="checkbox"/> \$795
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PAYMENT MUST ACCOMPANY REGISTRATION

GENERAL INFORMATION

CANCELLATION POLICY: Tuition, less a \$50 cancellation fee will be refunded upon receipt of written cancellation received by May 16, 2014. E-mail cancellation notice to cburkel@cailaw.org. After this date, no refunds, but substitution of attendees for this program will be permitted. Registrants not entitled to a refund will receive the course materials.

HOUSING: The cost of housing is not included in tuition. However, rooms (in limited number) have been reserved at The Hilton Post Oak Hotel, 2001 Post Oak Blvd., Houston, TX 77056. Registrants should call 1.713.961.9300 and advise them they are attending the "Institute for Energy Law -Mergers and Acquisitions" Conference to receive a reduced room rate of \$179 + tax. The last day to obtain this special rate is May 13, 2014.

NONDISCRIMINATION POLICY: The Center for American and International Law does not discriminate on the basis of race, color, sex, religion, national origin, age, disability, veteran status or any other protected status in educational activities, scholarship programs or admissions.

PRESS POLICY: All IEL conferences are held under the Chatham House Rule. Participants, including journalists, are free to use any information received, but comments may not be attributed to any speaker identified by name or affiliation.

MCLE CREDIT: This program is approved by the State Bar of Texas for 14.25 hours, including 1.5 hours of ethics. Course ID Number: 901289226. Sign-in sheets and/or certificates of attendance will be available for ALL states.

SPECIALIZATION CREDIT: This program is approved by the Texas Board of Legal Specialization for 14.25 hours in the following areas: Oil, Gas and Mineral Law



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