
Tuesday 28 September

The Move to Net Zero

10.00 am Welcome and Introduction to OGUK Legal Conference 2021

Tracey Keith, Legal Manager, OGUK

10.05 am Energy Transition in Action

Brenda Wyllie, Northern North Sea and West of Shetland Area Manager, OGA

Brenda will set out the current context that Oil & Gas industry face, will some tangible examples of the net zero journey in action. With the recent publication of the OGA Strategy it is important to understanding not only what the Industry can expect from the OGA but also what the OGA expects from industry.

10.25 am Climate Change Litigation: Emerging Trends and Why Those Matter

Niall McLean, Partner, Brodies LLP

Focusing on the increase in climate change litigation in the UK, reviewing the most common types and key trends (including actions brought against both governments and individual companies) Niall will also consider the environmental, social & governance (ESG) issues that arise in climate litigation.

10.50 am Panel Discussion with Questions from the Audience

Chaired by Sam Dunkley, Legal Manager, OGUK

Panel to include:

- Mohammed Chunara, MD, Head of Climate Risk, Acasta Risk
- Frank Kroes, Advocaat | Partner, Baker McKenzie
- Niall McLean, Partner, Brodies
- Brenda Wyllie, Northern North Sea and West of Shetland Area Manager, OGA

11.20 am Legal Issues Forum and Operators Legal Committee Update

Eve Brazier, LIF Chair

Tracey Keith, OLC Chair

11.30 am Thanks and Close

Tracey Keith, Legal Manager, OGUK

Wednesday 29 September

Energy Transition: Overview of Contracts for New Technologies and Related Legal Issues

10.00 am **Welcome and Introduction**
Tracey Keith, Legal Manager, OGUK

10.05 am **Overview**
Philip Duffield, Dalia Majumder-Russell, Paula Kidd and Andrew Shaw Partners,
CMS

This session will provide a brief overview of contracting arrangements for four types of “new technology” projects – CCS, Hydrogen, Solar and Wind. The session will then consider the key areas of comparison with traditional oil and gas projects looking at corporate structures, input/offtake arrangements and the construction phase.

10.45 am **UK Energy Transition Projects**
Will Webster, Energy Policy Manager, OGUK

11.00 am **Panel Discussion with Questions from the Audience**
This panel session will be chaired by David Leckie, partner Clyde & Co.

We are delighted to welcome a panel of 4 leading industry legal experts. As well as giving you the opportunity to ask questions from the floor, the panel will explore and discuss the legal/contractual challenges faced by in-house counsel as a result of the energy transition, including:

- *The contrasting risk allocation and liability and indemnity regimes between traditional “oil and gas” contracts and “construction/renewables” contracts*
- *The FIDIC v LOGIC debate*
- *What are the lessons for in-house counsel from some of the recent renewables decisions of the courts, such as the Supreme Court decision in MT Højgaard A/S v E.ON Climate & Renewables UK Robin Rigg East Limited*
- *Change orders and variations – a step change in contract management*
- *Pitfalls and top tips in drafting, negotiating and managing renewables contracts*

Panel to include:

- Fiona Parkin QC, Atkin Chambers
- Paul Buckingham, Keating Chambers
- Mary-Anne Roff, Partner, Clyde & Co
- Mark Walsh, Partner, Clyde & Co

11.30 am **Thanks and Close**
Tracey Keith, Legal Manager, OGUK

Thursday 30 September - Case Law Jukebox

10.00 am

Welcome and Introduction

Tracey Keith, Legal Manager, OGUK

10.05 am

Attendees will have their opportunity to vote and select which of the cases they wish to hear during the session before a closing panel discussion with industry experts giving their views on the cases shared and the impacts for the legal community.

EACH CASE WILL BE PRE-RECORDED AS A 15 MINUTE SESSION TO INCLUDE A CASE SUMMARY, KEY FACTS, ANALYSIS OF OPINION AND KEY TAKEAWAYS.

- **Apache v Esso**

Luke Pearce, Twenty Essex and Mark Walsh, Clyde & Co

This case raises questions about the proper interpretation of the statutory provisions for the abandonment of installations, s.29 notices and the meaning of “an installation”. The case concerned the potential exposure of affiliates, and will be of interest not just to current licensees, but also previous participants and their affiliates.

- **Apache North Sea Ltd v INEOS FPS Ltd**

Mark Walsh, Partner and David Bennet, Partner, Clyde & Co

“Shall not unreasonably withhold its consent”? This case should be of interest to any party who will either be responding to, or making a, request for consent in a JOA or other contract. It brings guidance and imposes welcome limits on the application of the Sequent authority. It will also be of critical interest to any party seeking to negotiate extensions of capacity or term with FPS, or needing to expedite a case in order to secure a Court determination on an urgent basis.

- **Seadrill v Tullow**

Fiona Cain, Counsel and Glenn Kangisser, Partner, Haynes and Boone

The speakers will share their thoughts on the topical issue of “Force Majeure and Risk Allocation in Oil and Gas Contracts”. Glenn and Fiona will use the case of Seadrill Ghana Operations Limited v Tullow Ghana Limited [EWHC 1640 (Comm) 2018], where they acted for the successful Claimant, as a case study.

- **R (on the application of Thornton) v OGA**

Mark Clarke, Partner and Stephanie Stocker, Associate, White & Case LLP

In R (on the application of Thornton) v the Oil and Gas Authority, the High Court considered whether to grant judicial review of a decision of the Oil and Gas Authority to provide support to a transaction, in circumstances where there was a foreseeable risk that, following the transaction, decommissioning liabilities would not be met. This case provides guidance both on the scope of the Oil and Gas Authority's powers on change of control of a licensee, and the extent to which the Court will carry out a review of the Oil and Gas Authority's decision making.

- **TGTL v CATS North Sea Limited**

Daniel Gardiner, Senior Associate Pinsent Masons LLP

A complex contractual dispute relating to the payment of a "Capacity Fee" payable by TGTL for reservation of capacity in the CATS Pipeline during the cost share period at the end of a long-term gas contract. TGTL disputed its Capacity Fee liability and withheld sums which amounted to over £40 million. One of the central issues between the parties was the contractual construction under the contract of the "CATS Capacity" figure which broadly set TGTL's proportionate share of the overall costs pool. The case also considered the use of allocation methodologies and an operator's rights to adjust or restate historic invoices. The CATS Parties were successful after a 4 week Commercial Court trial and again before the Court of Appeal in April 2020. Males LJ gave the leading judgment and undertook the "unitary exercise" of contractual construction.

- **BP Oil International Ltd v Vega Petroleum Ltd and anr**

Michael Ashcroft QC and Oliver Caplin, Twenty Essex

- **Taqa Bratani Ltd & Others v Rockrose**

Phillip Ashley, Partner and Valerie Allan, Partner, CMS

In TAQA Bratani Limited and Others v RockRose UKCS8 LLC the Commercial Court decided that a right of the non-operators to vote to remove an operator 'at will', in a joint operating agreement, was not subject to any implied constraints, including one of good faith. As similar clauses are an option in the AIPN (2012) Model International Joint Operating Agreement and continue to exist in a number of North Sea joint operating agreements, the Commercial Court's decision will be of wide commercial interest to operators and non-operators in the oil and gas industry.

- **Mott MacDonald v Trant Engineering**

Jeffrey Gruder QC, Essex Court

The presumption that exclusion clauses cannot apply to “fundamental” or deliberate breaches has been like a hydra.....just as it appears to have been finally dispatched into oblivion, it resurrects itself

The decision in Mott Macdonald may be its final death knell but, in addition, may have surprising implications for the well-known, and often applied, principle that clear and unambiguous language is necessary before a court will hold that a contract has removed rights or remedies which one of the parties to it would have at common law (Gilbert-Ash (Northern) Ltd v. Modern Engineering (Bristol) Ltd [1974] AC 689 [1974] AC 689 717G, per Lord Diplock, applied in the oil and gas field in e.g. Seadrill Management Services Ltd v. OAO Gazprom [2010] EWCA Civ 691 at [29])

- **ConocoPhillips Co v Chrysaor E&P Ltd [2021] 3 WLUK 524**

Gordon Nardell QC, Twenty Essex

In ConocoPhillips Company v. Chrysaor E&P Limited [2021] 3 WLUK 524, the Commercial Court ruled on a disclosure application turning on a claim to legal professional privilege in documents that ConocoPhillips had shared with Chrysaor as part of their 2019 sale and purchase of UKCS assets. Robin Knowles J had to decide whether the documents had lost their confidentiality and whether it was appropriate to order disclosure on an application made close to trial. Gordon’s presentation explains the decision and examines its implications for oil and gas M&A practice.

11.35 am

Panel Discussion with Questions from the Audience

Chaired by Valerie Allan, Partner, CMS

Panel to include:

- Iain Clark, Solicitor Advocate, Partner, Gilson Gray LLP
- Calum Crighton, Partner (Head of Oil & Gas / Energy), Gilson Gray LLP
- Rachel Lidgate, Partner, Herbert Smith Freehills
- James Robson, Senior Associate, Herbert Smith Freehills

12 noon

Thanks and Close

Tracey Keith, Legal Manager, OGUK