

## **Episode 46: Powering Deals: Energy M&A Trends and the Rise of RWI**

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**Welcome to Into the Breach, a reps and warranties policy podcast by Bryan O'Keefe and Gena Usenheimer, partners and co-leaders of the Transactional Underwriting Counsel practice at Seyfarth Shaw, interviewing leaders from the industry and exploring the latest developments, market trends, and news impacting RWI and the transactional risk insurance markets.**

**Bryan O'Keefe:** Hello and welcome to Into the Breach. I'm your co-host Bryan O'Keefe, joined by Gena today as always, and we are taping this at the beginning of the summertime. And Gena was just on a lovely vacation. If you want to tell our listeners about it, Gena.

**Gena Usenheimer:** I was. It was a great vacation. I went to Thailand and Singapore for two weeks, and I am happy to report that I went to bed at like 8:30 almost every night. I took naps. I read seven books.

**Bryan O'Keefe:** Wow.

**Gena Usenheimer:** A couple of them were novels of, you know, a reasonable quality, and the rest was essentially the Real Housewives in book form. But it was perfect, and I loved it, and it was very restorative. So thank you for holding down the floor while I was away abroad.

**Bryan O'Keefe:** Absolutely. I took a vacation to the lovely Mohegan Sun recently. I think you were also on that vacation. I mean, I don't know how you compare Mohegan Sun and Thailand. I don't know where you rank them, so...

**Gena Usenheimer:** Did you gamble? Did you win big at craps?

**Bryan O'Keefe:** I did not, no, I did not gamble, but I did hear that there was quite a run on the craps table. So I felt like I missed out or something since I wasn't down there, but our party had exhausted me by the end of it. To everybody who missed it, it was another roaring success. Somebody emailed me and said, "I've been to concerts that had fewer people than your party did, Bryan." So I thought that was a major compliment to our party.

**Gena Usenheimer:** Yeah, that was very nice.

**Bryan O'Keefe:** I had a panel the next day at 9:00 AM. So as soon as the lights came on—

**Gena Usenheimer:** You were out.

**Bryan O'Keefe:** I had to get out. Well, we'll turn the lights on the podcast here today. We are very excited to have with us a fellow Seyfarth partner, Christopher Cottrell, who's a partner down in our Houston office, and he's going to be talking with us today

about oil and gas deals. Chris is a partner in our energy group. Thank you very much for joining us today, Chris. We're really delighted to have you here.

**Chris Cottrell:** Hey, Bryan, very excited to be here. Hey, Gena, great to see you guys. Very excited to be on the podcast and share some of my experience and what I think is going to be a great 2026 for oil and gas.

**Bryan O'Keefe:** Well, that's what we like to hear too. So Chris, maybe if you want to start off by just talking a little bit about your background and what you've been doing. We know that you're an M&A energy attorney, but maybe just let our guests know what you've been doing in this space.

**Chris Cottrell:** Absolutely. So we've been very active in the space doing a lot of traditional energy. We picked up a large client who owns a lot of surface fee in West Texas—they recently went public. And so we're doing a lot of commercial work for them. At the same time, we continue to do a lot of data center transactions, mostly on the power generation side. And so that is keeping us busy. There seems to be a lot of capital flowing into that space and a lot of projects that are actually going online. So we're excited about that. And commodity prices are staying high, at least on the oil side. And so that seems to be keeping the deal markets busy. And we hope that that translates into some more transactions this year.

**Bryan O'Keefe:** And Chris, I know you've worked in some large law firms before coming to Seyfarth, but one particular credential you have that I always find very interesting is that you were a landman yourself. And we know the show is very popular, and we know that you had that as sort of a career before you became a lawyer, right?

**Chris Cottrell:** I did. I was a landman. And one thing I didn't get to tell you guys the story on the last time—this is our second time doing this, because the first time was a little rough. I was nervous. You guys made me nervous.

**Bryan O'Keefe:** We don't like making people nervous.

**Gena Usenheimer:** We weren't going to tell everybody that, but okay.

**Bryan O'Keefe:** No, we'll just put it all out there.

**Gena Usenheimer:** It's a re-record.

**Chris Cottrell:** It's a re-record. So unfortunately, I didn't have the stories, I wasn't myself. I just felt nervous. So I figured I'd tell you guys the story. So yes, I started out as a contract landman, and my job was to go from door to door, knock on doors and actually hand out checks for oil and gas leases. And it turns out I'm very good at giving money away.

**Gena Usenheimer:** Wait, what do you mean? For oil and gas—like, did you say oil and gas reasons?

**Chris Cottrell:** Leases.

**Gena Usenheimer:** Oh, leases, leases. Did you ever stumble upon someone who's like, "I hit oil in my backyard"?

**Chris Cottrell:** Never, never. But a lot of hoarders, a lot of—I drank a lot of iced tea and lemonade.

**Gena Usenheimer:** Wait, we need to pause and talk about the hoarder situation. This is a really interesting story. Was it animal hoarding or just regular hoarding?

**Chris Cottrell:** Just regular, mostly. It would mostly be retail.

**Gena Usenheimer:** What do you mean?

**Chris Cottrell:** Like unopened boxes everywhere, you'd have to step over things, and the house would be full of stuff.

**Gena Usenheimer:** Wow. Did you feel—when you left—

**Chris Cottrell:** Did I feel what?

**Gena Usenheimer:** Dirty.

**Chris Cottrell:** Sometimes you would take a pause and say, "I don't know if I want to drink the lemonade." You know how clean the lemonade was? But the people were very nice. It was nice to be invited in. And usually people are very receptive to receiving money.

**Bryan O'Keefe:** Oh, sure. Who doesn't like—

**Gena Usenheimer:** Yes, if you want to come to my apartment and pay me money.

**Chris Cottrell:** Exactly.

**Bryan O'Keefe:** For your oil and gas leases, Gena?

**Gena Usenheimer:** Yeah, right. I have some, I guess. I don't know, is there oil and gas under the streets of Manhattan? Well, maybe getting back to the serious podcast description. So after you were a landman, then tell us about your career and how you found yourself here at Seyfarth, being a really critical member of the Energy Group and, more importantly, of the RWI team.

**Chris Cottrell:** Well, look, I was very fortunate to be approached by Seyfarth to start the Energy Transactions Group, and then join the existing energy industry practice group that my co-chair Annette Idalski had already started when I got here. So I was fortunate to have that happen, and it's been fantastic. I always tell people there's a lot of smart lawyers, but it seems like the one common thread here among the partners that I've interacted with is that everybody is very personable, and they tend to just be great

people. And so that's a really distinguishing factor, in my experience. There's not many nice lawyers out there, and we have a lot of them.

**Gena Usenheimer:** Well, that's nice to say. And so what do you do day-to-day when you're not helping us on the RWI side of the house? What does your transaction practice really look like? Just to give our listeners a sense of your experience and where you're coming from.

**Chris Cottrell:** So historically, it's been a lot of midstream transactions and a handful of upstream transactions. My career—obviously, when I was a landman, I was on an asset team, we did a lot of acquisitions, and we were on the upstream side of the house. But recently, a lot of capital has been flowing into the data center power generation space. So it seems to be a lot of midstream commercial activity connecting, negotiating for supply, getting long-term arrangements in place, and then getting a lot of operations and maintenance agreements in place to get the power plants running and online. And there's a whole startup process for that. And so that's been an exciting twist on my practice that I hope continues.

**Gena Usenheimer:** Great. So if you could talk to us a bit about how RWI is used on these deals from your perspective—representing the buyer, the seller—how it sets the bid apart, and if and how it really helps get the deal done, that would be great.

**Chris Cottrell:** Absolutely. So I would say when I'm on the buy side, I tend to recommend that my clients submit an LOI that includes RWI already built into the bid, and a supporting letter along with that, that demonstrates you've gone into the market, that you've received bids from underwriters, and that you're prepared to go through the RWI process. And the reason why I recommend it is because it differentiates your bid. A lot of sellers do not want tail liability—they want to sell the asset and they want to move on to the next thing. And RWI allows the parties to have a clean closing. And if there are potential future claims, breach of warranties, there'll be a policy in place that stands behind the asset and allows the seller to continue with their business without dealing with that.

**Bryan O'Keefe:** And Chris, whenever you're on the buy side, what sort of due diligence are you providing to the insurers to get them comfortable with these risks? And what sort of due diligence, if you're an insurer who's perhaps going to be looking to get into this space, could you be expecting to see from the buy side or the insured?

**Chris Cottrell:** So in oil and gas, there are two elevated parts of the diligence process. There's the title side and the environmental side. On the title side, you're looking at the oil and gas leases, the coverage, making sure that the net mineral acres add up, that everything's fully leased, and that the royalty decks—which is how the royalties are calculated—tie out to the documentation. And so that's a very in-depth process. And then there's typically a 30-day to 60-day period in between sign and close that the parties go through that diligence process. And there's a claims process that happens before closing if they find that the seller is short. The same thing happens on the environmental side. There's a very in-depth diligence process. Consultants come in and

do what we call phase one reviews, and provide a written report that's usually several hundred pages long and has pictures of facilities and upstream oil and gas wells and any spills or staining that they find. And so it's really important to get that done pre-closing so that the parties are aware of the condition of the assets, and that any claims that need to be made are made before closing. And I'd say on the underwriting side, it's really important for the underwriter to have a solid land team and a solid environmental consulting team to help them with that process. So getting recommendations on providers and working with the client on picking the right team, I think, is important.

**Bryan O'Keefe:** So I think one of the frustrations that we sometimes have as underwriting counsel is that sometimes there's light due diligence, shall we say. But in your land—no pun intended—it seems like there is actually very comprehensive due diligence between the condition of assets and the environmental reports and the title reports. I think a lot of that's because these deals are so large to begin with. But it sounds like here, if you're providing very comprehensive due diligence, that should help the insurers get comfortable with these risks.

**Chris Cottrell:** Yes, absolutely. That process tends to be very in-depth, and it's kind of the norm in the market, because the assets are so complicated. Getting the buyer comfortable with the asset requires an elevated level of diligence. And it's very standard, especially when you're dealing with assets that have been producing for a while. That's some peace of mind on the title side, right? Because if there had been a claim with a lease, you would think that person would have come forward by now. So that's a positive. But then the negative is, well, it's been producing for a while, so environmentally, where are we with this asset? How much wear and tear do the facilities have? So it's a balancing game. And obviously with a newer asset, it's the opposite—you're more focused on the title side, because there's less production history.

**Gena Usenheimer:** And when you talk about condition of assets and wear and tear and the environmental diligence, I think in these deals it's a little unusual, or a little unlike an ordinary deal, where a lot of that diligence is happening in the interim period. Is that your experience as well?

**Chris Cottrell:** Yes, between sign and close is when all that happens. And again, there's a claims process, so the insurer would be aware of any claims that are brought forward. And typically, based on the materiality of the—I call it a defect claim—there may be an adjustment to the purchase price.

**Gena Usenheimer:** That's great. And then is that the diligence that you expect to see, or that you would have your clients put together? It's just sort of ordinary course—PCAs or things of that nature, and phase one reports—just sort of the ordinary, nothing unusual, just an ordinary course condition of asset and environmental diligence. Is that right?

**Chris Cottrell:** That's right. That's right. I would say, yeah, it's certainly not an elevated environmental review. That's not really appropriate in those types of transactions. So it's just a normal phase one, normal condition of assets. And sellers are very apprehensive

about granting phase two. And if I was a seller, I wouldn't allow you to do that. Because there's a knowledge aspect, right? There are no issues, and then you go and find something. Now it's my issue, and you were going to walk away from the table. And it could be something that has nothing to do with you—maybe there's a legacy operator from the 1950s that something happened. So let me back up. These shale plays tend to be on legacy acreage, stuff that's been produced since the 50s. And so you could have a new operator come in and drill deeper and drill something new that's unrelated. You could have a buyer come on your property, find something related to that production in the 50s that has nothing to do with your operation. That's an example of why somebody would be apprehensive to do a phase two or anything elevated.

**Gena Usenheimer:** Right, that all makes sense. And so, can you—go ahead, Bryan.

**Bryan O'Keefe:** No, go ahead.

**Gena Usenheimer:** I was just going to ask if you had a sense of—you said at the top of the episode that you're looking forward to a great 2026 in the space—just wondering what you've been seeing in the market, how it's differed from what you've seen in the past. It sounds a little bit like it's been shifting to these data centers. But if the purchase price and the EVs are changing, and if you can comment—it's a big question—on how the recent developments in Iran are perhaps impacting these deals and their valuation or the volume of the deals that are getting done? Anything that you're seeing like that from your perspective?

**Chris Cottrell:** So there's definitely more interest in oil assets. There seems to be an uptick in activity. The public markets are more receptive. Obviously, I mentioned that we have a new client that went public recently, and that was a successful offering. So that was really exciting. So the market overall seems to be more bullish and more receptive. Obviously, there is also a lot of price volatility on the oil side. And so that's causing the bid-ask spread to widen just a little bit. But I think parties remain receptive to closing transactions. And as I said, the overall deal volumes are up year over year. So that's very exciting in my mind. And I think that 2026 is already better than last year. So I hope that continues.

**Gena Usenheimer:** Oh, great. We always like to hear that.

**Bryan O'Keefe:** Kind of following up specifically with what Gena said about the Iran war—I think we had heard some discussion at Mohegan Sun about how that event makes it difficult to price oil and therefore is having an impact on the valuation of deals. I think we've heard from other sources, though, that they don't think it's having as much of an impact. So what have you been seeing in terms of the Iran war and the impact that that may be having on the oil and gas valuation of deals?

**Chris Cottrell:** Well, I think it goes without saying that there's a big question about whether prices are going to remain high. And so obviously, if you're on the sell side of an oil asset, you want to get the highest price possible. And in your mind, you're thinking, well, prices are going to stay high for a long time. On the buy side, I think

maybe some people agree with that. However, they also want to get the best deal possible and hedge their bets as to whether prices will remain elevated. So I think that deals are getting done. There does seem to be still a lot of stock-for-stock transactions, mergers. But on the asset level, deals are getting done. And I think that hedging is a great tool to leverage in order to lock in an agreed price that helps with value over the long run and get a transaction done. So I think a lot of parties are leaning into that as a potential bridge to get the deals done.

**Bryan O'Keefe:** Great. Well, that's all very informative. So Chris, before we head into our final section, is there anything else you want to share with our audience about your practice or RWI or what you're seeing in the oil and gas field right now?

**Chris Cottrell:** So in my experience—and I think the experience of a lot of other oil and gas M&A lawyers—I would just add that the claims tend to be very rare, because of the process that buyers and sellers utilize to close transactions. So I think it's a great space. These are large-value transactions, and there's a lot of history with these assets. There tends to be a lot of documentation, and operators overall seem to do a great job taking care of these assets. Obviously, any hydrocarbons that spill on the ground—that's lost revenue for the operator. So that's definitely not something they want to see. And so I think it's a great space for underwriters to jump into for potential opportunities. It's a space that tends to have lower-than-average claims. And so I think that's exciting from my perspective.

**Gena Usenheimer:** I think it's exciting from everyone's perspective.

**Bryan O'Keefe:** Lower-than-average claims—that's exactly what our clients like to hear. Well, I can't think of a better place to wrap up the main substance than that. We'll end on that high note, and we will now move to the last part of the podcast, our three questions that we ask all of our guests—the first two, which are the same every time, and our last mystery fun question. So I'll kick it off. And I know you kind of touched on this a little bit, Chris. Maybe if you just want to make one sort of final prediction here on what you think is a big change that we're going to see in the oil and gas energy deal space in the next 12 months.

**Chris Cottrell:** Okay, so I think one big change—here's what I think. I'm going to go bullish on this. I think natural gas prices—I'm bullish on natural gas. I know the oil and gas people that are listening are going to be cynical, and they're going to say that we have a lot of supply available. But I still think—I just see these data centers, and the size and scale and the amount of gas that they consume is just mind-boggling. So I think that demand for natural gas is going to continue to remain high, and that we should see that translate into higher natural gas prices in the next 12 months. So maybe my big prediction: we're going to see at least \$4.50 gas for an extended period of time.

**Gena Usenheimer:** What does that mean?

**Chris Cottrell:** The price of gas.

**Gena Usenheimer:** I don't have a car.

**Bryan O'Keefe:** So I asked a question about different types of gasoline, and Gena was very mystified as to why I cared about this. So I do care about what you're saying, Chris. I hope you're wrong, but I appreciate that prediction.

**Chris Cottrell:** I know, I know. And then your electric prices tend to fluctuate a lot with natural gas. So maybe you've seen that in your electric bill. But natural gas is currently at 315. So I'm saying I think maybe it will hit \$4.50 an MCF.

**Gena Usenheimer:** Yeah. That sounds bad.

**Chris Cottrell:** Sounds good. That sounds good.

**Chris Cottrell:** You know, maybe—look, high prices.

**Gena Usenheimer:** I'm so cheap with air conditioning, like—I went to Thailand for two weeks and that flight alone was like—and I will not put the air conditioning on because I'm so cheap, because it's so expensive with the electricity.

**Chris Cottrell:** Look, I find myself being more conscientious right now about driving places. I don't know about you guys. But here in Texas, we tend to drive a lot. And sometimes you realize how expensive it is, right? And it certainly changes your behavior—taking things for granted. So I think that's important, right? Higher prices, we should be more conscientious about utilizing natural resources. And so I think that's a good thing.

**Gena Usenheimer:** Well said. Okay, and then our second question that we ask all of our guests is: what is a piece of career advice that you would give to someone who might be interested in working in this space? And that can be energy, oil and gas, being a landman—I mean, I hope that's how you answer it. Really, any advice that you have to share.

**Chris Cottrell:** Okay, so I guess I'd give two pieces of advice. I would say that the first one is that you should endeavor to be a lifelong learner, to be intellectually curious. I think that's an important aspect of any really good long-term career. There's not a single day that I come to the office where I don't learn something new. And I think when you think you know everything, you've failed, right? The reality is that no one knows everything, and getting good at learning new things is very important.

**Gena Usenheimer:** Great. That's great advice, everybody, really.

**Chris Cottrell:** I appreciate that. And the older I get, the less I realize I know. And the second is, I think everyone should have a good mentor. I think mentors are really important, and that can really differentiate you and your career. There are just some things in your career, especially at a large company like where I started my career—there's a way that you carry yourself, and things that you should and shouldn't say in emails. Sometimes that comes more naturally for certain people. It didn't come naturally for me. And I definitely benefited from having great mentors.

**Gena Usenheimer:** And what things did you say in your emails that you shouldn't have said?

**Bryan O'Keefe:** We'll cut this out.

**Chris Cottrell:** It wasn't anything that I said. It was like—

**Gena Usenheimer:** Tone, more like tone?

**Chris Cottrell:** No, it wasn't tone. I will say, I used to work at a company, and I think my boss had a lot of grace for me, because I was early in my career. And I didn't realize—for example, I would come across a situation and realize that there is an answer to a problem that wasn't widely understood. And so I felt compelled to tell everybody what I just discovered. And so I'd send out a note to the other land people, the department, forwarding the information, when I probably should have run that through my boss first. And it's not that it was wrong. It was the way I did it.

**Gena Usenheimer:** That's disappointing from a labor and employment attorney perspective. I was hoping for something—

**Chris Cottrell:** Hey, the labor and employment lawyers—the stuff you guys deal with is just insane to me. I've never even heard of stories like that. I definitely did not encounter anything close to the stuff that I've heard since I moved into Seyfarth from my L&E clients. So it's crazy out there for L&E lawyers.

**Bryan O'Keefe:** Yeah. All right, so we'll get back to the final question here. So Chris, that's a great answer. So our final question, our mystery fun question here today—we'll go with the seasons, and we're taping this at the beginning of summertime. So Chris, do you have a favorite summertime warm-weather activity that is just at the top of your list during these next upcoming months?

**Chris Cottrell:** Okay, I was hoping you would ask me this, because I'm very excited. So we are in the process—and I'm very happy to announce this on the podcast live—of building a pool in my backyard.

**Gena Usenheimer:** Question: are you doing it like the people on Instagram, where it's in the shape of like a cat or a dinosaur or an iPhone? Or is it just like a pool?

**Chris Cottrell:** I wish I was that cool. It is a square, so I guess I could tell people it's an iPhone.

**Gena Usenheimer:** There you go.

**Chris Cottrell:** But no, I'm not that creative.

**Gena Usenheimer:** Is there a secret bunker underneath or next to the pool, which is also a big thing apparently on Instagram?

**Chris Cottrell:** I've got nothing. Now you're making me self-conscious about my pool. I didn't realize that that was a thing. I didn't ask my pool builder about this. He did not offer that as a potential offer.

**Gena Usenheimer:** I used to go back to him and be like, "Listen, sir, on Instagram, look at all these things that happened." Secret bunkers.

**Chris Cottrell:** 100%. I'm going to tell him, "You're missing out. You need to give better advice."

**Bryan O'Keefe:** So how close is it to done, Chris?

**Chris Cottrell:** So we're a couple of weeks out. But what's incredible is they started the whole thing on May 11th.

**Gena Usenheimer:** Oh, that seems like it's pretty fast. I would think that would—

**Chris Cottrell:** Yeah. So they're going to be fully done. It's basically been plumbed, the electricity's done, it's cemented, it's tiled, and now the last thing they have to do is plaster it and finish the turf. They finished the cement around it. So it's incredible how fast they've moved on it. And I will say that the gentlemen that had been working on the pool, the different trades, they work seven days a week. And it gives you a lot of appreciation for the number of people in this country that work so hard. And maybe we don't have such bad jobs after all.

**Bryan O'Keefe:** It's funny you mention this, Chris, because I have a pool. And on the one hand, I love it and it's great. But I will say, on the flip side of this, the maintenance and everything is a whole other mess. And we actually had a humongous issue getting our pool open this year, with the pool service people. So I don't know—they're great, they bring great enjoyment, but you'll be in for some developments along the way, dealing with the maintenance people and service people and everything else.

**Chris Cottrell:** Yeah, my neighbor said the same thing. And when I told him we were going to start building one—courtesy notice—he said, "I wish I could sell you mine."

**Bryan O'Keefe:** Yeah, I was maybe kind of thinking that as you were telling this story. Well, great, Chris. Well, thank you so much. We really appreciate you joining the podcast today and enlightening us about developments in the oil and gas industry. Just thank you so much for joining us. We really appreciate it.

**Chris Cottrell:** Thanks for having me, Bryan and Gena. And I want to give you guys a shout-out. I've worked with you guys on several transactions, and I think you guys are far and above the best I've ever worked with on the RWI side. So if you have underwriters listening, I highly recommend that you reach out to Bryan and Gena.

**Gena Usenheimer:** That's very sweet. But obviously you're a little bit biased.

**Bryan O'Keefe:** But we'll take it though. We like biased people.

**Gena Usenheimer:** Yeah. Thank you so much for coming on the podcast.

**Chris Cottrell:** Great. Thank you, Gena. Thank you.

**Bryan O'Keefe:** Thank you, Chris.

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