

Into the Breach Podcast: Episode 42: Oil Strike – Utilizing RWI on Oil and Gas Transactions

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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 and our latest episode, I am Bryan O’Keefe and joined by my co host, Gena Usenheimer. How are you this morning, Gena?

Gena Usenheimer

I'm good. How are you, Bryan?

Bryan O'Keefe

I'm very well. Thank you. And Gena, you the opening banter here. You know you were really throwing the axe down maybe is the best way to say it. And maybe you know, if you want to explain what I am alluding to, it will probably terrify some of our, you know, our audience out there. But I thought this was a –

Gena Usenheimer

Or impress them.

Bryan O'Keefe

- or impress them. That's probably true. I thought this was a very interesting activity you were doing a couple weekends ago.

Gena Usenheimer

Well, actually, it was not this most recent weekend, but the weekend before, I went to a spa in the Berkshires, I went to Miraval for a couple of days, and it was lovely. And one of the activities we did was hatchet throwing, and the instructor was like, this is a really good opportunity for everyone to be comfortable, like being bad at something. You don't have to excel, this isn't like in your regular everyday life, blah, blah, blah. Fast forward. I was amazing at hatchet throwing. I got like five out of five hatchets in the target like every round. I've discovered my Apocalypse skill. So like, when we're all fleeing from the zombies, I'm like, it was actually really impressive how good I was, having never thrown anything like that before. So I came away very proud of my skill set, my hidden, my hidden talent.

Bryan O'Keefe

Your hidden talent. That makes you even more of an underwriting counsel killer. Like, what broker is going to want to mess around with you after, like, knowing your axe throwing skills, right?

Gena Usenheimer

I'm gonna get some hatchets. Like, I think probably Amazon will deliver them, right? So I'll get some. I'll keep them at home in my go bag, just in case.

Bryan O'Keefe

Just in case in case something happens. Well, well, I don't know what, what special hobbies our guest has today, but maybe we will find out as we go along. We are very, very delighted to have join with us today Paige Brewin, the Senior Vice President and head of transactional liability at QBE North America. Thanks for coming aboard the podcast today Paige.

Paige Brewin

Thank you so much for having me. I'm so happy to be here, and I have two things off of Gena's story. One, I am dying to go to Miraval. It is on my list. Don't have to get tips from you. And then two, when I was at my first job at Norton Rose, I organized an axe throwing event for the women at the firm, and I was also really good at it.

Gena Usenheimer

A hidden skill. It's so funny. You said that because people in my group were like, "Are you a lawyer?" They're like, they could see, like, the rage or something with that. I mean, they're like, "Oh yeah, we could tell."

Paige Brewin

Yeah. I have a very dorky picture somewhere with my bull's eye.

Gena Usenheimer

That's amazing. Was it a big axe?

Paige Brewin

No, it was small. You did have to throw it overhead, but it was small and pretty dull.

Gena Usenheimer

That's good, yeah. So these hatchets were like, they weren't, like, that much bigger. They were like, like, than the scissor that I'm holding out for our listeners. So it was, like, scissor wise, but it was sharp, so you just had it like it was... anyway, it was very satisfying.

Bryan O'Keefe

Well, Paige, that was something I did not know about you. So we learn new things here on into the breach all the time. So Well, we are really delighted to have Paige join us today, and we're going to be discussing a very timely topic, the oil, gas, energy, spaces and how RWI is now being used on those

sorts of deals. But before we get to that Paige, maybe if you just want to give a little bit of background for our listeners, anybody who might not be familiar with you, your career trajectory, how you got involved in RWI.

Paige Brewin

Sure, I'd love to, I kind of alluded to it with my axe throwing story. But I started my career out of law school at Norton Rose in the Houston office, in the Employee Benefits group. Very early on in my time, there a couple people whose names will be very familiar to everyone in this space, Scarlett McNally and Henry Stark got me involved in underwriting counsel work. So I worked with an amazing senior associate at Norton Rose, Justin Coddington, and did benefits and labor underwriting for a couple of years to what was at the time, the majority of carriers and MGUs in the space, including QBE, obviously, there are a lot more now. It was a really unique opportunity as a junior associate to get really direct client access, something I think a lot of juniors don't get for a long time. So I got to meet all the clients, I got to come to New York and give presentations, and really got huge exposure to tons of different transactions. So it was, it was a really great experience, and then after a couple years, when Toria was looking to build the QB team, I came over to work with her in January of 2019, so it's really been best of both worlds, because I get to work with all of the people that I love working with back at Norton Rose and my former clients now competitors, use a lot of the same skills, but I have a lot more, I would say, autonomy and freedom, than maybe I did as an associate in private practice. So I can't say I miss the billable hour model.

Bryan O'Keefe

Yeah, right. And I think there's a great background too, like Gena and I both did other things before we did this. How did you kind of find your background, and previously, being another sort of attorney, and now being basically like in the insurance industry - how did you find that those sorts of skills sort of transferred over given you didn't have like, maybe the traditional like M&A background, I guess.

Paige Brewin

There was definitely a lot to learn. But with, you know, the support and institutional knowledge at QBE and then also with the support of underwriting counsel, it wasn't, you know, impossible, I think you learn by doing too. I mean, you do see a volume of transactions, both on the underwriting counsel side and when you're underwriting that you don't see, if you're just representing buyer's counsel. So you get a really good sense for what's market, what's normal, what's not. So I think a lot of it is learning by doing. But, I mean, you pick it up pretty fast.

Bryan O'Keefe

Yeah, yeah, I completely agree. I think the learning by doing is right. I mean, there's not like, there's tons of textbooks or something written about how to do this. There's a lot of just kind of getting in there and going at it. Well, that's a great background, and it's certainly prepared you very well for your for your current position. So today, we'll transition now to the main topic today Your QBE is leading oil and gas and energy practice. We know that you're certainly one of the top leaders in the RWI space, sort of underwriting those deals. So maybe we'll kick it off with just a little bit of oil and gas 101, for the listeners and how you kind of view this space.

Paige Brewin

Yeah, sure. So I think we can kind of think of the energy sector in two buckets. So the first is oil and gas, and then the second is kind of other energy production. So first - oil and gas includes kind of three categories, upstream, midstream and downstream. They're kind of what they sound like. Upstream involves exploration, production, extraction. And then midstream is the transportation, storage and distribution of oil and gas. And then finally, downstream is refining, distribution and sales, so how it actually ends up in the hands of the end customer. And then the second bucket, other energy production, is renewable energy, fossil fuel on the renewable side, things like wind, hydro, geothermal, solar. The majority of what we see from the rep side and what we underwrite is midstream and then, more recently, the upstream opportunities. But we see some renewable deals even more. So that's where we really see a lot of opportunity in the tax credit space, which QBE does a lot of as well.

Gena Usenheimer

Great. Well, that's very interesting. And we've seen not so much recently, but I know that in our practice, we've seen a lot of wind and solar deals, which are very interesting because it's sort of like a plot of land that at some point they're gonna throw some wind turbines on. So it's a lot of tax credit and contract and land ownership. It's not really a wind farm yet, at least that we've seen. So it's interesting, yeah, unlike another target.

Paige Brewin

Yeah, that space is really developing. And, you know, it's kind of a question of where it goes with the IRA and in the current environment, but we've had a really successful tax credit book, and we have a really kind of leading team there. We have three underwriters who actually underwrite tax and reps, which I think is pretty unique. They're all attorneys, and have always been tax attorneys. And so they can bring kind of a unique perspective, and being able to underwrite both, and that allows them to also underwrite the hybrid deals, which not everybody will do.

Gena Usenheimer

So they were just like, being a tax underwriter is just not exciting enough. We're gonna move over.

Paige Brewin

You know, I think they're smart enough to diversify their skill set. I could not underwrite a tax deal, but know enough to be dangerous. But they, they really are able to kind of, you know, pick up on the rep side if tax gets a little slower, pick up on the tax side if that gets a little slower. So I think they're just smarter than the rest of us.

Gena Usenheimer

Okay, that's fair, all right. And then why don't you talk a little bit about, I mean, you mentioned that you do midstream and, more recently, upstream, but sort of, like, your sweet spots for coverage, what are the deals you really like to see? What are the deals that you have the most like, the biggest appetite for, things like that?

Paige Brewin

Yeah, sure. I think we were some of the first to get comfortable underwriting in the energy space. We've been underwriting midstream deals, really back to 2017 and so we've been doing a lot of that ever since. And then in 2023 we saw an opportunity to start underwriting the upstream opportunities, which previously, I don't really think maybe one or two markets had been doing. So we worked with our outside counsel and technical experts to really educate ourselves and get smart to the nuances on those risks. So we've had significant experience with those now too, about 18 months into underwriting them, and energy has really grown to be a pretty meaningful portion of our portfolio.

Bryan O'Keefe

And on those sort of energy deals, you know, I guess, especially like maybe the midstream and the upstream, are there certain, you know, risks that are, you know, higher risk - the things you're sort of like really trying to drill down on whenever you're when you're when you're looking into due diligence ?

Paige Brewin

Definitely, I think there are a few primary areas of risk. They're probably fairly intuitive. But first, environmental; second, condition of insufficiency of assets, regulatory compliance, real property, including title matters, and then probably more for upstream, even data privacy and cyber breaches. Thinking back to the Colonial Pipeline ransomware attack in 2021 we might not have thought that would have been relevant before then, but cyber is relevant to nearly everything we learned, but yeah, the short answer is that we get comfortable covering these matters when they're supported by sophisticated, thorough diligence. So for environmental that really means new or recent phase ones and desktop reviews for condition of assets, we typically will require a third party report from technical experts. For regulatory we want to see that buyer had knowledgeable advisors doing a thorough review of the targets compliance. And then for title, that one's a little unique for upstream in particular. We want to see a written report summarizing title diligence on a significant portion of the assets, so let's say 80% of the allocated value of the target's property. So it's really important to understand how long the seller has owned the property, because if they've owned it for five years versus 50 years, that really changes the risk from a title perspective. A couple other things we look at, we want to see sufficiency of underlying insurance in all relevant areas too. I mean, this comes up all the time, but the reps and warranties policy is not a replacement for commercially reasonable insurance. So that's something we focus on. And then we also, for our part, we just rely on our extensive experience underwriting the deals and work with top underwriting counsel to assess the exposures.

Gena Usenheimer

Well, I have a question on the cyber piece of it. So are you requiring IT diligence, or more like sufficient, adequate underlying cyber insurance? Just to get comfortable with that.

Paige Brewin

I would say a combo of both. I mean more on midstream, but we want to see that it was looked at, that the reps are supported. You know, it depends on the scope of the reps too, right? So it doesn't necessarily require a third party IT report, but we just want to make sure that the buyer has really kicked the tires on cyber as well.

Gena Usenheimer

Right, because it's, I would think it's not so much like customer, employee privacy data. It's more just, like there's a hack and it shuts down.

Paige Brewin

Yeah, it's more business operation, making sure they have the right policies and procedures in place to get to get back up and running quickly, exactly.

Bryan O'Keefe

I imagine, too, that one advantage of these deals, I think we've seen this, is the diligence tends to be more robust because they are buying - these are larger deals, they're buying all this land or buying all this equipment or whatever, and so the buyer is already doing a lot of very robust, comprehensive due diligence that then you're able to access. Is that sort of in your experience as well?

Paige Brewin

Definitely. That is a really positive thing about these deals. I think it's an area where the quality of the diligence has remained really strong. Not to say that it's slipping largely elsewhere, but we can still expect third party technical diligence that maybe we can't expect on other deals with like environmental or heavy assets anymore. I would say the buyers interested in these assets are generally already in the oil and gas space. So they are specialists themselves. They're really well positioned to do the diligence themselves, to know what to look for, and they have really strong third party advisors, and they know who to engage, who can do a really sophisticated job. And a lot of that still is memorialized in writing, which maybe you're not seeing across the board elsewhere, it also--oh, go ahead, Gena.

Gena Usenheimer

I was gonna say, I think that might be a characteristic of these highly regulated targets, like in these highly regulated spaces. We, in an earlier podcast, we were having the same conversation about a different regulated space, like the buyers really know what they're getting into. The quality of diligence is strong. The advisors are sophisticated. I think it might just be a result of the fact that they have to have everything, you know, their I's dotted and their T's crossed day to day because of the nature of the target and the operations.

Paige Brewin

Yeah, I definitely agree with that. And then another thing, I mean, because they're doing some of the diligence in the interim period here, particularly on the upstream deals, they also might have more time to do it thoughtfully, to have a little bit more of a plan, versus rushing to get it done before an LOI expires. So that's kind of a unique feature about these deals, too.

Gena Usenheimer

So how much of the diligence is getting done in interim period? Like, is it? Is it everything? Or is it mostly like title and real estate? I guess environmental might be getting done in the interim period as well.

Paige Brewin

Yeah, for the upstream deals in particular, there are some unique aspects. So to your point, often title environmental and condition of assets are all done in the interim period. So after signing, before closing. For example, a big part of what the buyer is acquiring are the mineral interests. So title is very important. The Purchase Agreement will typically include a mechanism allowing the buyer to conduct title diligence during the interim period. So to the extent any defects are identified, the seller can either cure the defect or the parties can adjust the purchase price. There's a similar concept for environmental diligence and defects, and we really need to see the results of that process to determine appropriate coverage, condition of assets diligence often also conducted in conjunction with the environmental diligence so that can be, you know, engineering reports, review of CapEx, operating agreements, maintenance and repair records, things like that. So the way we handle that is will include broad conditional exclusions for those matters until the diligence is complete and we can underwrite to it. So I think the scope of what is being done in the interim period may be broader than a typical deal, but it's not a fundamentally different approach from, for example, a deal where the buyer is acquiring a software company and they're deferring international tax diligence until the interim period because of time constraints or something like that. You know, in that case, you typically include a conditional exclusion too. So similar, similar approach, just maybe broader scope.

Gena Usenheimer

And then what do you do on the bring down? Do you have, like, a more robust bring down process, or do you just, you review updated, written reports and get comfortable that way?

Paige Brewin

Yeah. I mean, it's definitely a more - there's more to cover at bring down. So it's not the five minute bring down call, but you're getting the reports in the interim periods. You can review them. So it's definitely a little more involved than on other deals, but, but not fundamentally dissimilar from a process perspective.

Bryan O'Keefe

What have you been seeing too, Paige, around, sort of the financial terms on these deals, like pricing, retention, submission, flows? We know the regular RWI markets had some challenges in some of these areas more recently. And so how is it kind of comparing with this more specialized oil and gas space?

Paige Brewin

The energy space has definitely been less susceptible to the market fluctuation and kind of macroeconomic conditions. So we've actually seen pretty consistent, strong performance and deal flow over the last like 18 - 24, months. On pricing, you know, I think especially with upstream, not as many markets were competing for these deals. You know, in 2023 I think more are doing it now, and the pricing should, and generally does, reflect kind of the additional expertise and experience required to underwrite them, but it's definitely becoming a more competitive market.

Bryan O'Keefe

And if you've seen in terms of like your claims experience, and don't have to get in if there's been, like, a giant claim you don't want to talk about - but just generally speaking, comparing this to the regular

reps deals, I would imagine there's been, you know, far fewer claims on these sorts of deals than what you sort of see on the regular reps deals. Has that been your experience?

Paige Brewin

I mean, I've heard rumors of claims in the market, I think, I think it came up a plus a little bit. But honestly, we, on our book, have not really seen any, anything, anything really, like alarming. You know, we see claims on these deals, as we do with any other industry sector, but no trends in like breach type or anything unusual in terms of frequency or severity, nothing that like deviates in a negative way from kind of the industry standard for claims. And we at QBE, we have dedicated claims specialists, Dana and Ian, who are really experts at handling these types of claims. We work super closely with them, so we can really deliver a consistent experience from quote through underwrite to claims resolution.

Gena Usenheimer

That's great. I mean, because I would be panicked about, like, a major title issue, or like some sort of condition of asset situation that explodes, but it sounds like that's not what's happening. So that's really good to hear, it sounds like that's not what's happening.

Paige Brewin

The diligence is really good, but I am going to knock on wood.

Gena Usenheimer

On all the things, yeah, for sure.

Paige Brewin

You do need claims, right? The policies are here to pay claims, and we insurers are here to pay the good claims, so legitimate claims. So you know, for it to make sense for these buyers to continue to buy this product, we do need to see some claims, and we have seen a handful. But you know, nothing, nothing to give us pause.

Gena Usenheimer

That's good. That's good to hear. Okay, well, do you have anything else that you before we move into the next section of the podcast, or, like little fun game section? Do you have anything else you want to add?

Paige Brewin

Can I tell you a little more about QBE and our team?

Gena Usenheimer

Please do.

Bryan O'Keefe

We love the QBE team, so please tell everybody else about that.

Paige Brewin

I know. I hear from people sometimes that we're their favorite team. QBE just generally. QBE is a global insurer with over 11,000 employees across 27 countries. For the transactional liability team, we've been writing since 2015 and reprints, and then we added tax in 2017 so we've really been in the space for a long time, with a decade of underwriting and paying claims, we've had a long term strategy and commitment to this space. I think what I always say, if I'm asked, you know, what's the big differentiator of QBE, we have kind of the resources, support and staying power of a large global market, but at the business unit level, we really do have a lot of autonomy and authority so we can deliver a really efficient process for our customers. So that's kind of what we pride ourselves on. And then to talk about our team a little bit, we have a team of 16. When I started, we had four so, yeah, it's been really exciting growth to be here for and to help, you know, kind of build out the team to such a wonderful group that we have now. It's 10 underwriters, two analysts, two operations specialists and two claims specialists, as I mentioned, majority are lawyers coming from either big law or top accounting firms. Three of us practiced at firms in Houston, which is where a lot of that energy business is concentrated. So we had boots on the ground there, and we've had really strong retention, especially for the space, so we've been able to deliver a really consistent experience. So you know, a client that works with one underwriter that they like in 2021 can still work with that same underwriter in 2025 which is which is great and helps us build that trust. And then, specific to the energy, we have three underwriters who primarily handle our energy deals, Chris Graham, John Siegel and Win Aukamp, and they're really market leading technical experts in the space, and our customers really love working with them.

Gena Usenheimer

Well, what's not to love?

Paige Brewin

Exactly.

Bryan O'Keefe

Well we love working with them too, that's great. Paige, well, you know, you have a fantastic team at QBE and really market leaders, and you've built out a wonderful practice around this oil and gas space, and it's been great hearing more about it. So thank you for sharing so much useful information for our listeners around this area.

Paige Brewin

Of course, thank you for having me.

Bryan O'Keefe

All right. Well, you're not off the hook yet, though we have the next part. The fun part are three questions. The first two questions are the same for everybody, and then the last one is the mystery fun question. So we will kick it off with our first question we ask all of our guests, which is the biggest change that you think we will see in RWI in the next 12 months?

Paige Brewin

Okay. You know, there's so much uncertainty right now. I'm not sure I have a prediction, but can I share a hope? If that works?

Bryan O'Keefe

Yeah, hope is something we would like to have right now. Yes.

Paige Brewin

Exactly. Well, my hope for the remainder of the year, I'd love to see no dramatic changes, you know, maybe some capacity exiting, pricing improving a bit. But, you know, I really hope for an uneventful year, which we're not off to a great start, but maybe for the remaining three quarters.

Gena Usenheimer

Maybe a little busier too?

Paige Brewin

Yeah, you know, it's been a, it's been a funny year so far, but we, we're actually doing really well, but I wouldn't say it's linear.

Gena Usenheimer

Yeah, we are having a similar experience. So I guess we'll see how it shakes out. Okay. And then what is a piece of career advice you would give to someone who might be interested in working in this space? And it's sort of a very general this space - so transactional risk, underwriting, oil and gas, energy, whatever, however you want to answer it.

Paige Brewin

I love this question. I feel like I am happier in my job than almost anyone I know.

Gena Usenheimer

That's great to hear, actually. That's unusual.

Paige Brewin

So I think this space is really a wonderful field to be in, especially as an attorney coming - it's a great alternative if private practice is not the right, right fit. So I would just say, go for it, reach out. I think everyone in this space is very happy to talk about it, because people have generally found it to be a really positive move. So you know, it's really been the best move for my career and my life generally. I think I've gotten opportunities in this industry that I wouldn't have gotten for a decade in private practice, I've met people that have become some of my closest friends. I'll stay with - I've stayed with people that I've met through this industry. And I'd also plug that it's a really great space for women. I think there's a really supportive network of female leaders, and I've met some really amazing mentors at QBE, and also through the women of transactional risk group, our team is majority women, and the way that we've been able to support each other through different phases of life and changes and support a thriving career, all while doing kind of market leading work that's a huge point of pride for me and for the QBE team. So I think if you're willing to work hard and learn, it's really a great industry with great people. You do, you do still have to work hard.

Gena Usenheimer

I was going to say, and stay up late sometimes, but yeah, that waiting for a deal to sign. But, yeah, personally, impressive though, to have so many women, because I found in my experience, this is a welcoming space for women. But there's It is unusual to have a team and underwriting team that is mostly women, or majority women, so it's very nice to hear that you guys have been able to do that so successfully. So congratulations.

Paige Brewin

Thank you. Yeah, we, I'm very happy in this space, so I would encourage anyone who's curious about it to reach out to anyone you know in it. And I'm happy to always talk to people that are curious. Because I think it's a, it's a real opportunity for something that you don't learn about as an as a career path in law school.

Gena Usenheimer

Yeah, that's true.

Bryan O'Keefe

I think we, we would definitely agree with that, and you'd be a wonderful person for people to reach out to learn more about this, this particular industry. So all right, Paige, so our final question, our mystery, fun question. You have no idea what we're going to ask you, but we came up with one that is oil and gas themed, shall we say? So there's often a debate, when somebody pulls in to the gas station if they're going to put in 87, 89, 93 super turbo, something. So when you are putting gas in your car, Paige, I guess this, this question presumes you have a car. You know, what sort of gas do you typically use whenever you're at the gas station?

Paige Brewin

Oh, this is gonna make me sound really dumb. I was told by the dealership that I'm supposed to put in premium. Sometimes I feel like I'm just being like, scammed, because it's more money. So I would say, like 75% of the time I do premium, and then every now and then, I just do regular when no one's looking.

Bryan O'Keefe

My wife has had the same. My wife has had the same 'Is this a scam?' She's had all the same conflicts that you've had around this issue, so do not feel dumb. This is, I think, a common issue that people sometimes have whenever they are they're going to the gas station. So I have an older car, and I always put in the pop stop. And I don't know, who knows if it's actually going to help preserve the engine. They tell me it's supposed to, but I don't know it's... it is much more expensive, that's for sure.

Paige Brewin

Yeah, we do have the gas station closest to my house is full service, which I know in New Jersey is the standard, but in Boston is not. So this is the only one I'm aware of. So I do always make a point to go to that one, and I don't even have to get out of my car.

Bryan O'Keefe

Well, that's very, very convenient. Now we noticed that Gena is being very silent during this particular part of the conversation, because then I said that I said that I wanted to have this be the mystery fun question, living in New York City and not having a car, she was befuddled as to why this was something that would be actually important to anybody.

Gena Usenheimer

Also, I didn't know that people still use gas, don't you just, like, plug the car in and go? I mean, I don't have a car, so I don't know. I rented a car once and it was, like, totally electric, and it was very stressful to have to, like, calculate how far I was going and find a charger and then charge it, and then whatever. But, you know...

Paige Brewin

That's how I feel. I know I need to go easy when it's time to get a new car, but I'm really scared of running out of battery somewhere.

Gena Usenheimer

I know, but you have a house, you could, like, a lot of people, put it in their garage, or whatever. You could, like, charge it there. So I hear, but I don't know. This is a fascinating end to this podcast, I don't know, but in the meantime, I don't have, I don't have a car, so I don't have to worry about filling it up with battery juice or gas.

Bryan O'Keefe

All right. Well, well, Paige, thank you so much for joining us today. This has been a really wonderful podcast. We really enjoyed having you with us and talking about such an informative area and just thank you so much for joining us today.

Paige Brewin

Thank you for having me.

Bryan O'Keefe

All right. Well, that wraps up another episode of Into the Breach, and until next time...

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