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# Quarterly

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ROUNDTABLE

# Expert insights: Trends in the oil and gas industry



*In the spring of 2021, Burford Director Jeffery Commission and Vice President Reda Hicks asked a group of trial attorneys, arbitration leads and dispute resolution specialists in the energy sector about major risks and opportunities in the oil and gas industry following the pandemic. Their insights are gathered and excerpted below.*

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## Q.

**A year after Covid, what are the major areas of concern and opportunity in the oil and gas sector?****Mark Baker:**

While everyone says that “volatility is the new normal,” in the oil and gas sector volatility has always been the norm. Covid-19 created larger waves in most economies, with the oil and gas sector hit hard by a seemingly perfect storm: The pandemic, a downturn in demand, steep declines in oil prices followed by sharp rebounds, political instability, trade wars and sanctions. Major areas of opportunity and risk post-pandemic are a dichotomy between those who recognize that the world will need oil and gas to fuel its growth and the increased pressures to move quickly toward the energy transition. Related to that is the increased focus on ESG and Business & Human Rights issues along the energy value chain. Also important are the risks associated with political instability and change including to investment regimes and domestic energy policies.

**Joe Buoni:**

Just five or ten years ago, many clients in Houston would recoil if you started

talking about renewable or alternative sources of energy. Now, clean energy is an area of growth for traditional oil and gas firms—especially the larger ones. Just recently, we saw a multinational oil company propose a \$100 billion investment for a facility that would capture carbon emissions on the Gulf Coast. While this is a response to the concern of climate change, it’s an area of opportunity to generate revenue and capture public attention.

Another opportunity is in the consolidation of the traditional oil and gas industry. Last year, Chevron made a large acquisition, as did Southwestern Energy and Devon Energy. There was a recent wave of bankruptcies at the onset of the pandemic in March 2020. Usually, banks and lenders are reluctant to take over the assets of their companies in the face of a downturn. What was unusual was that many lenders were willing to take on assets of oil and gas companies this time around and—since it paid dividends—were getting more than their loans back.

“Dispute risk audits are an important mechanism, particularly for large corporations with a global reach.”

**Michelle Gray:**

One major area of concern in energy litigation is the uncertainty surrounding many of the lawsuits already on file. More than a year into the pandemic, there is still relatively little precedent from courts on some of the core legal questions posed by the pandemic-driven litigation. While most judges have tried to keep their dockets moving through virtual hearings, the vast majority of courts have not been holding trials and, as a result, it is difficult to predict how courts are going to decide many of these core issues that are percolating in pandemic-driven litigation. The lack of case law is also affecting arbitrations;

without clear precedent to follow, arbitrators are often inconsistent in their analyses.

However, with the US seeing reduced numbers of Covid-19 infections, there are opportunities for resolution of pandemic-driven lawsuits outside the courthouse (or an arbitrator's conference room). To the extent possible, now is a good time to reassess ongoing litigation and see if a business solution makes sense. Rather than spending money on litigation, it might make sense to renegotiate deals or try and work out settlements—especially if your disputes are pending in a court backlogged due to the pandemic.

**Q.**

**In many cases, we are beyond the point in the pandemic where force majeure can serve as a basis for handling commercial disputes, yet we are still feeling the ripple effects of Covid. How are you helping clients manage the continuing uncertainty caused by the ripples?**

**James Brown:**

The impact of Covid-19 is still often a key issue for parties. Unlike an event of force majeure having a short duration, the pandemic has continued for well over a year and, with no end in sight, continues to impact projects. I have seen matters where parties are yet to agree on the pandemic's impact to date and who have had a real difficulty in arriving at a deal on its impact on their contractual obligations and rights. The difficulty arises from having to determine the pandemic's current

and future impact on their projects. Parties don't want to preclude claiming further extensions of time if circumstances change, especially if they face another lockdown. So, there is that tension, which can make it hard for parties to move forward with a plan on an agreed footing.

**Mark Baker:**

The best way to manage uncertainty is to "know the enemy and know yourself." Dispute risk audits are an important mechanism, particularly for large corporations with a global

# Thank you for your interest in Burford.

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